after the employer does this need the plaintiff show the employer's neutral reasons are a pretext for racial discrimination on preponderance of the evidence. *Id.*

Once the burden shifts back to the plaintiff under the *McDonnell Douglas* framework, "there are two distinct ways for a plaintiff to prevail – either by proving that a discriminatory motive, more likely than not, motivated the defendants or by proving both that [1] the reasons given by the defendants are not true and [2] that discrimination is the real reason for the actions." *Gordon* v. *N.Y.C. Bd. of Educ.*, 232 F.3d 111, 117 (2d Cir. 2000) (internal citation omitted). Even if there existed a lawful reason to terminate an employee alleging discrimination, the employee can still recover under a mixed-motive theory if she can prove that the employer was motivated in some small part by discriminatory intent. *See Price Waterhouse* v. *Hopkins*, 490 U.S. 228, 252 (1989) ("[A]n employer may not meet its burden in such a case by merely showing that at the time of the decision it was motivated only in part by a legitimate reason.").

To survive a motion for summary judgment, a plaintiff must allege facts "that at least minimally support an inference of discriminatory motivation." *Taylor* v. *City of N.Y. (Dep't of Sanitation),* 2019 WL 3936980, at *4 (S.D.N.Y. Aug. 20, 2019). The types of evidence deemed sufficient to withstand summary judgment are varied, but in general, "[s]tatements that are devoid of any specifics, but replete with conclusions, are insufficient to defeat a properly supported motion for summary judgment." *Risco* v. *McHugh*, 868 F.Supp.2d 75, 99 (S.D.N.Y. 2012) (internal citation omitted). As a matter of law, an employee's disagreement with a workplace evaluation alone is insufficient to survive the summary judgment stage of a Title VII discrimination claim. *Id.* at 105.

"The circumstances that give rise to an inference of discriminatory motive include actions or remarks made by decisionmakers that could be viewed as reflecting a discriminatory animus." *Chertkova* v. *Conn. Gen. Life Ins. Co.*, 92 F.3d 81, 91 (2d Cir. 1996). Prior comments directed at an employee indicating animus on the basis of membership in a protected class are sufficient to meet this burden. *See, e.g.*, *Richmond* v. *Gen. Nutrition Ctrs. Inc.*, 2011 WL 2493527, at *15 (S.D.N.Y. June 22, 2011) (comments about an employee's accent could lead a reasonable fact-finder to conclude adverse employment actions were taken due to race); *Rosario* v. *N.Y.C. Dep't of Educ.,* 2011 WL 1465763, at *3 (S.D.N.Y. Apr. 15, 2011) (comments about a Dominican plaintiff's accent sufficient to survive a motion to dismiss); *Flores* v. *N.Y.C. Hum. Res. Admin.*, 2011 WL 3611340, at *9, n. 9 (S.D.N.Y. Aug. 16, 2011) (a supervisor belittling a plaintiff's accent, combined with outside evidence of accent-based discrimination, sufficient to infer racial animus); *Doran* v. *N.Y. State Dep't of Health Ofc. of Medicaid Inspector Gen.,* 2017 WL 836027, at *13, *15 (S.D.N.Y. Mar. 2, 2017) (derisive comments about a Russian plaintiff's accent sufficient to satisfy an inference of racial animus leading to adverse employment decisions). But racist comments by themselves are insufficient to meet this burden if the comment is not specifically directed at the employee. *See, e.g.*, *Perez* v. *N.Y. State Ofc. of Temporary and Disability Assistance*, 2015 WL 3999311, at *2 (S.D.N.Y. June 30, 2015) (general derogatory comments about Haitians insufficient to establish discriminatory intent against a Dominican plaintiff).

Plaintiff would likely meet the four-factor *McDonnell Douglas* test for prima facie cases of discrimination, and survive a motion for summary judgment by the defendant. The first three factors are easily met: Plaintiff (1) belongs to a protected group,

as she identifies as Hispanic, (2) can show she was qualified for her position as a teacher, as she is duly licensed and has undergone training to that effect, and (3) suffered an adverse employment action, namely, "discontinuation" from her position. The fourth factor, circumstances giving rise to an inference of racial discrimination, is a question of fact for a jury to decide. *See Chertkova*, 92 F.3d at 87 ("Since it is rare indeed to find in an employer's records proof that a personnel decision was made for a discriminatory reason, [all materials] must be carefully scrutinized for circumstantial evidence that could support an inference of discrimination."). Plaintiff's strongest claims of racial animus are from her allegations of Defendant instructing her to speak with an "American accent", both in private and in public. A reasonable jury could likely infer that any adverse actions taken by Defendant against Plaintiff were because of these comments, and because of this, a judge will likely permit the question to reach the jury. *See, e.g., Richmond, supra*; *Rosario, supra*; *Flores, supra*.

Finally, as NYSHRL claims are analyzed pursuant to the same standard as Title VII cases, *see E.E.O.C.*, 967 F.Supp.2d at 832, Plaintiff would likely also survive a motion for summary judgment by the defendant on this claim had it also survived a motion to dismiss for failure to provide notice of claim, see *supra*

B. Plaintiff's NYCHRL Claim is Likely to Survive Summary Judgment

While the NYSHRL is subject to the same standard as Title VII, claims brought under the NYCHRL are analyzed "separately and independently from any federal and state law claims." *Mihalik* v. *Credit Agricole Cheuvreux N.A., Inc.*, 715 F.3d 102, 109 (2d Cir. 2013).

In NYCHRL cases, similar to the *McDonnell Douglas* framework, a plaintiff must still establish a prima facie case of discrimination on the basis of a protected class, and a defendant must then offer a legitimate reason for an adverse employment action. *Ya-Chen Chen* v. *City Univ. of N.Y.*, 805 F.3d 59, 75–76 (2d Cir. 2015); *see also Bermudez* v. *City of N.Y.*, 783 F.Supp.2d 560, 577 (S.D.N.Y. 2011) ("[C]laims of employment discrimination under the NYCHRL are analyzed under the same *McDonnell Douglas* framework applicable to Title VII . . . and NYSHRL claims."). Once this is satisfied, "summary judgment is [only] appropriate if the record establishes as a matter of law that discrimination . . . play[ed] no role in the defendant's actions. *Ya-Chen Chen*, 805 F.3d.at 76 (citing *Mihalik*, 715 F.3d at 110 n. 8).

Furthermore, on the merits, the NYCHRL is more lenient to a plaintiff than either Title VII or the NYSHRL in that a client need only prove that membership in a protected class was "a motivating factor", rather than the but-for cause of the adverse employment action. *Weiss* v. *JPMorgan Chase & Co.*, 2010 WL 114248, at *4 (S.D.N.Y. Jan. 13, 2010). The NYCHRL embraces a mixed-motive theory in that "where an adverse employment action is shown to be motivated by racial or ethnic animus, *even in part*, the defendant may be held liable." *Farmer* v. *Shake Shack Enters., LLC*, 473 F.Supp.3d 309, 330 (S.D.N.Y. 2020) (internal citation omitted) (emphasis added). "That said, a plaintiff's mere subjective belief that be was discriminated against because of" race is insufficient to prevail under the NYCHRL. *Id.* (internal citation omitted).

On the facts presented, Plaintiff would be likely to prevail at summary judgment for the same reasons she is likely to prevail at summary judgment under Title VII and the NYSHRL, as the analysis of claims and elements under the NYCHRL is

similar, if not more lenient. *See Bermudez*, 783 F.Supp.2d at 577. As under Title VII and the NYSHRL analysis, Plaintiff's strongest evidence to support a claim under NYCHRL are the sporadic comments made by Defendant in which she instructs her not to use an "American accent". Plaintiff's adequate pleading of this fact should support overcoming a motion for summary judgment, and may even be sufficient to prevail on the merits if Plaintiff can show that this incident played some small part in Defendant's poor treatment of her.

II. Defendant Is Subject to Individual Liability Under NYSHRL and NYCHRL, But Not Under Title VII

Individuals are not subject to liability under Title VII. *Patterson* v. *Cnty. Of Oneida, N.Y.*, 375 F.3d 206, 221 (2d Cir. 2004). Therefore, Plaintiff's Title VII claim against Defendant will likely be dismissed with prejudice. However, individuals are subject to liability under the New York State Human Rights Law and New York City Human Rights Law. *Foster* v. *Consol. Edison Co. of N.Y., Inc.*, 2021 WL 4461163, at *1 (S.D.N.Y. Sept. 29, 2021).

Individuals can be held liable under the NYSHRL but is "limited to individuals with ownership interest or supervisors, who themselves, have the authority to hire and fire employees." *Malena* v. *Victoria's Secret Direct, LLC,* 886 F.Supp.2d 349, 366 (S.D.N.Y. 2012). It is likely Defendant meets this criteria as Principal of her school, as she likely had the ability to fire Plaintiff, or at minimum, had the supervisory authority over Plaintiff to justify individual liability. *Cf. Malena*, 886 F.Supp.2d at 366 (agent of employer not individually liable under NYSHRL because he did not have firing authority

or ability to "unilaterally set Plaintiff's schedule, hours or salary"). Therefore, Defendant can likely be found individually liable under the NYSHRL.

Under the NYCHRL, Defendant is more exposed to individual liability. The NYCHRL makes it unlawful "[f]or an employer or an employee or agent thereof, because of the actual or perceived . . . race . . . of any person . . . to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment." NYCHRL § 8-107(1)(3). Unlike under the NYSHRL, Plaintiff need not show that Defendant had an ownership interest in the school or that she had the authority to hire or fire her. Rather, she need only show that Defendant was an employee of the DOE, and that as an employee of the DOE, Defendant discriminated against Plaintiff in any way due to her race.

Applicant Details

First Name	**Robert**
Last Name	**Gallo**
Citizenship Status	**U. S. Citizen**
Email Address	**galloro@bc.edu**
Address	**Address** Street **180 Telford St Unit 321** City **Boston** State/Territory **Massachusetts** Zip **02135**
Contact Phone Number	**7745730091**

Applicant Education

BA/BS From	**Northwestern University**
Date of BA/BS	**June 2021**
JD/LLB From	**Boston College Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=12201&yr=2011**
Date of JD/LLB	**May 20, 2024**
Class Rank	**10%**
Law Review/ Journal	**Yes**
Journal(s)	**B.C. Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Cassidy, R. Michael
michael.cassidy@bc.edu
617-552-4343
Koh, Steven
kohst@bc.edu
Coquillette, Daniel
coquill@bc.edu
617-552-8650

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ROBERT GALLO

180 Telford Street, Unit 321 · Brighton, MA 02135 · (774) 573-0091 · galloro@bc.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at Boston College Law School, and I am writing to apply for a clerkship in your chambers for the 2024-2025 term. As an aspiring trial litigator, I believe a district court clerkship is simply the best manner in which to learn how to conduct a trial, providing an opportunity for me to develop both my research and persuasive skills. I believe that my commitment to the study of law and public service, combined with my research and writing skills, make me an excellent candidate for a clerkship with your chambers.

Throughout my time in law school and during my undergraduate experience at Northwestern University, I have worked diligently to improve my research abilities with regards to any topic, from securities to police use of force and to the breadth of topics I have examined for my role on the Law Review Editorial Board. I have further endeavored to use my research skills in support of the public by working in the Securities Division to protect the investing public and in the Boston College Prosecution Clinic. I believe my commitment to determining the right outcome under the law and my use of that in the public service would allow me to contribute immediately to the work of the judiciary.

Enclosed please find my resume, law school transcript, and a writing sample. My writing sample consists of my submission for the Law Review Writing Competition in which I drafted a Motion to Dismiss a possession w/intent to distribute charge on the basis of entrapment. Additionally, you will be receiving letters of recommendation from Professors Daniel Coquillette and Michael Cassidy of Boston College Law School, as well as Professor Steven Koh of Boston University Law School (formerly of Boston College Law School).

Please feel free to contact me at (774) 573-0091 or by email at galloro@bc.edu if you need additional information. Thank you for reading and considering my application.

Respectfully,

Robert Gallo

Enclosures

ROBERT GALLO

180 Telford Street, Unit 321 · Brighton, MA 02135 · (774) 573-0091 · galloro@bc.edu

EDUCATION

BOSTON COLLEGE LAW SCHOOL Newton, MA
Candidate for Juris Doctor May 2024
GPA: 3.780/4.00 (Top 10%)
Honors: Boston College Law Review, Executive Comment Editor (2023-2024), Staff Writer (2022-2023)

NORTHWESTERN UNIVERSITY Evanston, IL
Bachelor of Arts, History & Earth and Planetary Science, Minor in Philosophy June 2021
GPA: 3.78/4.0
Honors: Received Department Honors in History; Dean's List
Thesis: Climate Controversy and Scientific Credibility: The Use of Peer Review in Drafting and Attacking Climate Science and Policy, 1990-2010
Activities: Standards Chairman, Lambda Chi Alpha Fraternity

LEGAL EXPERIENCE

MASSACHUSETTS SECURITIES DIVISION Boston, MA
Legal Intern May 2023 - August 2023

- Protect investors by investigating potential securities laws violations
- Draft settlement offers to resolve violations of securities laws
- Participate in depositions and on-site examinations of records

BOSTON COLLEGE LAW SCHOOL Newton, MA
Clinical Student, Prosecution Clinic August 2023-December 2023

Clinical Student, International Human Rights Practicum January 2023 - May 2023

- Drafted brief on the labor rights of migrants for publication by the Inter-American Human Rights Commission.

Research Assistant, Professor Steven Koh May 2022 - August 2022

- Researched, analyzed, and summarized trends in criminal and international law to identify issues suitable for scholarly publication.
- Drafted paragraphs and citations for law review publication, "Policing & The Problem of Physical Restraint" (64 B.C. L. REV. 309).

ADDITIONAL EXPERIENCE

USA TRACK & FIELD Multiple Locations
Track & Field Referee September 2017 - present

- Officiate meets at levels ranging from high schools to national championships
- Interpret and enforce rules; determine and communicate results, qualifications, and disqualifications.

NORTHWESTERN INTRAMURAL SPORTS Evanston, IL
Official Supervisor September 2018 - June 2021

- Managed university-wide intramural sports program; served as lead official for up to 30 staff members.
- Primary point of contact to handle disputes related to rules violations and interpersonal conflicts.

INTERESTS

Taekwondo, hiking, running, skiing, building Legos, reading nonfiction (esp. history & philosophy), model rocketry, cooking/baking, fantasy sports

BOSTON COLLEGE LAW

Unofficial Grade Sheet

Date Prepared: 6/5/2023

Student Name: Robert Gallo

Anticipated Graduation: 2024

Cumulative GPA: 3.78

Address: 180 Telford St

City, State, Zip: Phone Number: Boston, MA 02135: 774-573-0091

Email: galloro@bc.edu

Fall Semester 2021

Course Title	Instructor	Credits	Grade
Civil Procedure	Linda Simard	4	A
Contracts	Brian Quinn	4	A-
Law Practice	Jeffrey Cohen	3	A-
Torts	Dean Hashimoto	4	A

Spring Semester 2022

Course Title	Instructor	Credits	Grade
Constitutional Law	Ryan Williams	4	A-
Criminal Law	Steven Koh	4	A-
Intro to Municipal Law	Howard Levine	3	A-
Law Practice	Jeffrey Cohen	2	B+
Property	Daniel Lyons	4	A

Fall Semester 2022

Course Title	Instructor	Credits	Grade
Evidence	Michael Cassidy	4	A
Professional and Moral Responsibility	Daniel Coquillette	3	A
Corporations	Brian Quinn	4	A-
International Law	David Wirth	3	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

BOSTON COLLEGE | LAW

Unofficial Grade Sheet

Spring Semester 2023

Course Title	Instructor	Credits	Grade
Anglo-American Legal Heritage	Daniel Coquillette	3	A-
International Human Rights Practicum	Daniella Urosa	4	A-
State Constitutional Law	Pat Moore & Eric Neyman	2	A
Trial Practice	Paul Chernoff & Edward Ginsburg	2	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

I am writing to recommend Robert Gallo, Boston College Law School Class of 2024, for a clerkship with your chambers for the 2024-2025 term.

Robert was a student in my Evidence Course during the fall of his second year of study. He received one of the top marks in the course—a straight "A." I could tell from his penetrating questions-- both during and following class-- that Robert had intellectual curiosity and a solid grasp of even the most complex and nuanced material. His written work on the final exam was exceptionally clear, well organized, and analytically persuasive.

Robert Gallo is an extremely bright, inquisitive, and hard-working young man. He has earned an impressive 3.79 GPA to date BC Law, placing him roughly in the top 5% of a very competitive class. Robert also serves as Executive Notes Editor of the Boston College Law Review, where he has further refined his already strong writing research and analytical skills. I served as an unofficial advisor to Robert on his law review note, where he is examining critiques of Daubert under FRE 702. He has thrown his attention into this project with passion and enthusiasm, as is typical for him.

I am confident that Robert Gallo would do a terrific job for you, and that you would enjoy working with him. Please do not hesitate to contact me at (617) 552-4343 if I can provide you with any further information about this outstanding candidate.

Sincerely,

R. Michael Cassidy
Professor of Law and Dean's Distinguished Scholar

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

I write to provide my strongest possible recommendation in support of Robert Gallo's application for a clerkship in your chambers. During both first-year Criminal Law class and his time as my Research Assistant, Robert made a lasting impression on me with his uniquely strong research and comprehension abilities. As a result, I am exceptionally confident in his ability to excel as a clerk in your chambers.

I currently serve as Associate Professor of Law R. Gordon Butler Scholar in International Law at Boston University School of Law. Previously, I served as Marianne D. Short and Ray Skowyra Sesquicentennial Assistant Professor of Law at Boston College Law School. In this latter capacity, I first got to know Robert when he was my student in my 1L Criminal Law class. I further developed my relationship with him over the summer of 2022, when he worked as my Research Assistant.

In Criminal Law class, Robert stood out due to his level of preparedness and his willingness to participate in class. He consistently asked incisive questions that transcended the material and demonstrated a uniquely innate understanding of not just the subject matter, but also the underlying justifications for the law and the objections against it. He excelled academically in his other 1L classes as well, further illustrating his exceptional potential in the legal field and his suitability for a clerkship with your chambers.

Robert most impressed me during his time as my RA in summer 2022. During that summer, I worked with him on numerous research projects, most notably my most recent paper entitled Policing and the Problem of Physical Restraint. I would meet with him at least once a week for a few hours to assign research tasks and engage in broader philosophical discussions about law and policy. I first tasked him with conducting a survey of the federal appellate circuits to examine local standards for classifying use of force by police officers. He excelled at this task, identifying a nascent structure in some circuits for analyzing the use of force that no other academic paper had previously described. His research skills are uniquely developed for a second-year law student, as he quickly distilled reams of cases into conclusions that supported my article's arguments. I also tasked Robert with drafting paragraphs reflecting his research for inclusion in my paper. Once again, he excelled at this task, demonstrating strong innate legal writing abilities that made his paragraphs easy to incorporate into my article, with little to no editing required. I also tasked him with several exploratory research projects to determine if several topics were suitable for further research. Once again, he excelled at these, exploring novel and timely disciplines of law to see if further study of them would prove fruitful. He is a uniquely strong researcher and writer, qualities that would make him an exceptional clerk in your chambers.

One of Robert's most valuable qualities is his ability to digest complex information and be an active listener. He researches with unique speed, in large part due to his comprehension skills. Whenever I described my research to him, he listened intently and asked questions that demonstrated his understanding of not only his task, but also the larger context that the research existed within. I never needed to explain something twice to him: he immediately grasped the complex nature of my research and illustrated his understanding by producing excellent work each time. He would provide an immediate workload benefit to your chambers due to these already developed skills that are so important in chambers work.

More personally, Robert was a pleasure to work with. I enjoyed our weekly meetings and our discussions, which spanned beyond the specific research questions I posed and touched on other areas of law and policy. Robert always was willing and able to discuss these topics even without preparation. He always submitted his work on time and completed each task I assigned beyond my expectations.

In sum, Robert would be an excellent clerk in your chambers. He has deeply impressed me with his talent and potential, and I expect him to thrive in the clerkship environment. His curiosity, enthusiasm, and ability are notable and would positively impact your chambers. If you have any questions about my recommendation or if I can be of any further assistance, please do not hesitate to reach out.

Sincerely,

Steven Koh
Associate Professor of Law, Boston University
R. Gordon Butler Scholar in International Law
T 617-353-2212 F 617-353-3077
Email: koh@bu.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Candidacy of Robert Gallo

Dear Judge Walker:

It is my very great honor and privilege to recommend Mr. Robert Gallo, an applicant to be your law clerk. Mr. Gallo has been my student in two of my courses and is currently enrolled for a third. He has been one of the most outstanding students in all of the courses, and also one of the most outstanding students in my long experience as a law teacher. His contributions in class and in the examinations show a genuine original mind, which is constantly taking new approaches to difficult problems. He also has an extremely accurate intellect and is capable of first-class legal analysis.

Mr. Gallo graduated from Northwestern University with a Bachelor of Arts in History and Earth and Planetary Science with an outstanding GPA of 3.78/4.00, which resulted in his being given Departmental Honors in History. During that time, he wrote a very compelling thesis on climate controversy and scientific credibility, which demonstrates his excellent writing skills.

At Boston College Law School, he has continued his emphasis on writing and research, being elected to the Boston College Law Review and becoming Executive Comment Editor for the Review. At Boston College, he not only has done superb work for the Law Review, but has accumulated a GPA of 3.79/4.00, which would put him close to the top of his class.

He also has very valuable practical experience. This summer he will be a legal intern in the Massachusetts Security Division in Boston, and he has also been a clinical student in both our Prosecution Clinic and our International Human Rights Clinic. He served as a Research Assistant for Professor Steven Koh, an outstanding scholar.

Mr. Gallo has a fascinating background in athletics. He is an Official Track and Field Referee for the U.S. Track and Field Organization. In this capacity he has served as an official for major track events, including National Championships. This builds on his experience at Northwestern, where he was the Official Supervisor for Northwestern's Intramural Sports Program and was the lead official for up to 30 different staff members in managing the university-wide sports program.

Mr. Gallo would be a terrific new member for your chambers. He is an excellent writer and has first-class research skills. But he also has a great inherent sense of fairness, and experience in resolving difficult disputes. He has a genuinely original and entertaining intellect, and is a thoroughly delightful person. My recommendation is as enthusiastic as I can make it!

If you have any further questions, please do not hesitate to call me at 617-642-8130.

Yours sincerely,

Daniel R. Coquillette
Former Dean and J. Donald Monan, S.J., University Professor, Boston College Law School
Charles Warren Visiting Professor of American Legal History, Harvard Law School
Consultant, Standing Committee on Rules, Judicial Conference of the United States

Robert Gallo
galloro@bc.edu | 774-573-0091

Writing Sample

The following Writing Sample was prepared as part of the Writing Competition for membership on the Boston College Law Review. For the Competition, I was assigned a closed universe of cases and a stipulation of facts and was instructed to write a memorandum raising an entrapment defense to the charge of selling a controlled substance. The details of the case are described in the Sample. For the purposes of the competition, certain formatting and citation rules were implemented. I received no external feedback on this work.

STATE OF MINNESOTA **COUNTY OF BLUE EARTH**	**DISTRICT COURT** **FIFTH JUDICIAL DISTRICT**
STATE OF MINNESOTA, **Plaintiff,** **vs.** **MICHAEL VARNSEN,** **Defendant.**	**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS** **File No.: 22-1695**

The Defendant, Michael Varnsen, has moved this honorable Court to dismiss the above-captioned complaint charging him with 5th Degree Sale of a Controlled Substance in violation of Minnesota Statute 152.025. The Defendant moves the Court to dismiss the complaint on the grounds that he was entrapped by Detective Daniel Landry of the Mankato Police Department. Pursuant to Rules 26.01 and 9.02 of the Minnesota Rules of Criminal Procedure, the Defendant has waived his right to present the entrapment defense to a jury and now submits the defense to the Court for its determination. To expedite the Court's determination of this motion, the Defendant and the State have stipulated to certain facts for the purpose of the motion; the parties have filed the stipulation with the Court.

Because Detective Landry induced the Defendant to commit the crime with which he is charged and because the State cannot prove beyond a reasonable doubt that the Defendant was predisposed to commit that crime, this Court must dismiss the complaint against the Defendant.

STATEMENT OF THE CASE

This case exemplifies the need for the entrapment defense and its role in protecting individuals from committing crime at the insistence of the government. The state has charged the Defendant, Michael Varnsen, with Fifth Degree Sale of a Controlled Substance, stemming from an incident that occurred on March 21, 2022. Stip. ¶ 4. On that date, Detective Landry of the Mankato Police Department proceeded to Moreland Avenue while undercover to investigate possible marijuana sales based on an informant's report. Id. ¶¶ 4-5. While on Moreland Ave. at approximately 3:45 p.m., Det. Landry saw Mr. Varnsen standing outside near his residence. Id. ¶ 6. Det. Landry had never met Mr. Varnsen before and had no information linking him to any marijuana sales. Id. ¶ 7. Det. Landry approached Mr. Varnsen while wearing a wire and solicited the purchase of marijuana from him. Id. ¶ 8. When Mr. Varnsen responded negatively to the solicitation, Det. Landry persisted. Id. When Mr. Varnsen again refused, Det. Landry continued his patrol of the area. Id. ¶¶ 8-9. While on his patrol, Det. Landry encountered no evidence of marijuana sales in the neighborhood, leading him to return to Mr. Varnsen after approximately forty-five minutes. Id. ¶¶ 9-11. When Det. Landry again solicited Mr. Varnsen, Mr. Varnsen again refused to sell marijuana to the Detective. Id. ¶ 12. During this conversation, Det. Landry claimed to need the marijuana to deal with PTSD. Id. ¶ 12. Only after being asked to sell marijuana five times did Mr. Varnsen agree to help Det. Landry buy marijuana. Id. ¶ 12. As a result, Mr. Varnsen made a phone call before leading Det. Landry to a house, which Mr. Varnsen entered. Id. ¶¶ 13-16. Mr. Varnsen returned from the building with the marijuana requested by Det. Landry, a quantity of seven grams, and sold it to him for eighty dollars. Id. ¶¶ 17-19. As a result, Det. Landry placed Mr. Varnsen under arrest. Id. ¶ 18.

ARGUMENT

This Court should grant Defendant's motion to dismiss on the grounds of entrapment because (1) the preponderance of evidence demonstrates that the Government induced Mr. Varnsen to commit the charged offense, and (2) the State has failed to meet its burden of demonstrating beyond a reasonable doubt that Mr. Varnsen was predisposed to commit the offense of selling marijuana.

I. The Entrapment Defense

The entrapment defense prevents the police from "ensnar[ing] the innocent and law-abiding into the commission of a crime." *State v. Poague*, 72 N.W.2d 620, 624 (Minn. 1955) (quoting *Newman v. United States*, 299 F. 128, 131 (4th Cir. 19XX)). While it is not unlawful for the government to provide someone with the opportunity to commit a crime, the government may not induce an individual to commit a crime she otherwise lacks the intent to commit. *See State v. Grilli*, 230 N.W.2d 445, 451-52 (Minn. 1975). The entrapment defense ultimately acts as a limit on the state to prevent the government from manufacturing offenses or placing criminal intent in the minds of citizens. *See id.*

To establish the entrapment defense, the defendant must show that she was not predisposed to commit the charged offense, and that the police induced the defendant to commit the offense. *Id.* at 452; *see also State v. Olkon*, 299 N.W.2d 89, 107 (Minn. 1980). If the state can demonstrate the defendant's predisposition to commit the crime, then the entrapment defense fails even if the defendant was induced. *Grilli*, 230 N.W.2d at 452. However, if the defendant shows she was entrapped, then further prosecution is barred, and any conviction is vacated. *Id.* at 456.

II. The Government Induced Mr. Varnsen to Sell Marijuana

The actions of Detective Landry induced Mr. Varnsen to sell marijuana. A defendant is induced to commit a crime if the police badgered, persuaded, or pressured the defendant to

commit the offence. *Olkon*, 299 N.W.2d at 107. If the police repeatedly ask a defendant to commit an offense after her initial refusal, then they have badgered the defendant so as to constitute inducement. *State v. Johnson*, 511 N.W.2d 753, 755 (Minn. Ct. App. 1994) Mere solicitation of a crime is not enough to constitute inducement. *Olkon*, 299 N.W.2d at 107. Furthermore, the police can misrepresent the truth and use trickery without causing inducement, so long as they only provide the defendant an opportunity to commit the crime. *Poague*, 72 N.W.2d at 625.

If the defendant initiated the offense without being solicited by the police, then she was not induced. In *State v. Bauer*, the defendant's mother was solicited at her workplace to sell drugs by a police informant. 776 N.W.2d 462, 468-69 (Minn. Ct. App. 2009). While she declined, she informed her son about the opportunity to make a drug sale. *Id.* at 469. As a result, the defendant drove to his mother's workplace to sell marijuana. *Id.* Furthermore, the defendant returned to the store to initiate an unsolicited sale of a different drug, ecstasy. *Id.* It was the defendant's mother, not the police, who solicited the defendant to sell drugs. Even if they police had induced the defendant, his return to the store to commit another offense was entirely his own initiative. As a result of the defendant's actions and the role of his mother in communicating the opportunity for the sale, the court refused to find inducement. *Id.* at 470.

The police can solicit the commission of a crime without entrapping a defendant. In *Poague*, the defendant ran a service purportedly matching men and women for dates. *Poague*, 72 N.W.2d at 622. An undercover police officer approached the defendant and asked her to find a girl for him before he left town in a few hours. *Id.* at 623. When the defendant was unable to find a girl, she offered to "take care of [the officer] myself . . ." for the price of $30, and then began to undress while telling the officer to use a prophylactic for the upcoming

sexual activity. *Id.* The defendant was later convicted of prostitution for this incident. *Id.* at 622. While she claimed entrapment, the court pointed out that the officer had only provided her with the chance to commit a crime, nothing more. *Id.* at 625. He had not pressured her in any way to prostitute herself; indeed, the record showed she was quite willing to commit the offense. *Id.* Furthermore, the officer's false story used to solicit the defendant merely set the trap and did not go far enough to pressure her. *Id.* As a result, she was not induced to commit the offense. *Id.* Similarly, in *Lombida*, the defendant sold cocaine to undercover officers on multiple occasions, indicating a willingness to engage with the officer after only a solicitation. *State v. Lombida*, 2012 WL 1380264 at 3 (Minn. Ct. App. 2012). For inducement to occur, the police must do more than just solicit a crime.

When the police continue to badger a defendant who refused to commit an offense to pressure him to do so, then inducement has occurred. In *Johnson*, the defendant was approached by a friend, secretly a police informant, who wanted to sell marijuana. 511 N.W.2d at 754. The defendant refused to buy marijuana. *Id.* Undeterred, the informant continued to call the defendant in an attempt to sell him drugs, offering increasingly good prices. *Id.* After several calls and a meeting, the defendant agreed to buy the drugs on behalf of a friend and was arrested upon completion of the sale. *Id.* Because the police continued to badger the defendant even after he refused to buy marijuana, the court found inducement. *Id.* at 755.

The inducement element of entrapment is satisfied only if the police go beyond the solicitation of an offense by badgering, pressuring, or otherwise persuading a defendant to commit a crime. *Olkon*, 299 N.W.2d at 107; *see also Poague*, 72 N.W.2d at 622. If the police continue to pressure a defendant to commit a crime after his initial refusal, then the inducement element is satisfied. *Johnson*, 511 N.W.2d at 755.

Mr. Varnsen was induced to sell marijuana by law enforcement because Det. Landry continued to badger him to sell the drugs after he initially refused to do so. *See id.* When Det. Landry first approached Mr. Varnsen on the street near his residence, he asked if Mr. Varnsen knew where to buy marijuana. Stip. ¶ 8. Mr. Varnsen answered negatively, and when told that someone in the area was dealing weed, again denied knowledge. *Id.* After forty-five minutes of patrols, Det. Landry returned to Mr. Varnsen and again requested weed from him. Id. ¶¶ 9-12. Mr. Varnsen again stated his unwillingness to sell marijuana. Id. ¶ 12. Only in response to Det. Landry's fifth query did Mr. Varnsen agree to contact a third individual who could provide marijuana. *Id.* Mr. Varnsen did not initiate the offense, as he never approached Det. Landry in an attempt to sell marijuana. *See Bauer*, 776 N.W.2d at 470. When Det. Landry persisted after his trap had failed, he went beyond soliciting Mr. Varnsen and instead induced him. *See Poague*, 72N.W.2d at 625 (requiring more than a solicitation for inducement to occur); *see also Johnson*, 511 N.W.2d at 755. Just as in *Johnson*, an undercover informant continued to pressure the defendant to engage in a drug transaction despite continued refusals, until eventually the defendant gave in to the pressure and made the transaction. *Johnson*, 511 N.W.2d at 754. Such repeated conduct by a police officer constitutes badgering, and therefore inducement. *Id.* at 755. As a result, the court should find that Det. Landry induced Mr. Varnsen to sell marijuana.

III. Mr. Varnsen Was Not Predisposed to Sell Marijuana

Mr. Varnsen is not predisposed to sell marijuana and did so exclusively as a result of Detective Landry's inducement. If a defendant is predisposed to commit a crime, then entrapment is not a defense even in the presence of inducement. *Grilli*, 230 N.W.2d at 452. A defendant is predisposed to commit an offense if she actively solicited to commit the crime, if

she has prior criminal convictions, if she engaged in past criminal activity without a conviction, or if she has a criminal reputation. *Id.* Criminal convictions only show a predisposition if they were recent enough to connect temporally with the charged conduct. *See Johnson*, 511 N.W.2d at 755; *see also In re G.D.*, 473 N.W.2d 878, 884 (Minn. Ct. App. 1991). A predisposition can also be shown when the defendant readily responds to a solicitation to commit a crime, mitigating the state's actions. *Olkon*, 299 N.W.2d at 107-08. Furthermore, the defendant must be predisposed to commit the crime before she is approached by government agents. *Johnson*, 511 N.W.2d at 755.

A defendant's prior criminal activity, with or without a conviction, can show a predisposition. In the case of G.D., the defendant was charged with selling drugs to undercover police officers who approached the defendant. *G.D.*, 473 N.W.2d at 879. Prior to this transaction, the police observed the defendant engaging in other drug transactions with other dealers, even as the defendant explained his drug business to the officers in justifying his delays of the sale. *Id.* at 884. The defendant's pattern of prior criminal behavior, all of which related closely to the charged offense in both time and activity, was sufficient to establish a predisposition, even though he was never even charged for those transactions. *Id.*

However, the defendant's criminal activity must have been recent to establish a predisposition. In *Johnson*, the defendant had been involved in marijuana sales over twenty years before the instant offense. *Id.* at 754. The temporal gap was too great for the state to use those sales as evidence of a predisposition. *Id.* at 755. Even prior drug use by itself cannot establish predisposition. In the E.E. B. case, the defendant was a regular drug user who arranged a drug sale to a police informant. *In re E.E. B.*, 2009 WL 1374313 at 1 (Minn. Ct. App. 2009). The defendant's drug use could not show her predisposition to sell the drugs, in

large part because intent to use drugs does not translate to an intent to sell drugs. *Id.* at 2 (finding that the question of predisposition is very similar to the question of intent). As a result, the state can only show the defendant's predisposition using criminal activity if the activity occurred recently and suggests intent to commit the charged offense. *See id.*; *see also Johnson*, 511 N.W.2d at 755.

A defendant is also predisposed to commit a crime if she readily responds to solicitations to commit the crime. In *Olkon*, the defendant, an attorney, engaged in a health insurance fraud scheme by taking cases from people with fraudulent injuries and receiving settlements for these fake injuries. 299 N.W.2d at 93. Undercover police posed as victims of a fake accident and informed the defendant of their desire to get an insurance settlement for injuries despite no injuries existing. *Id.* at 94. The defendant then proceeded with the claim despite knowing the fraudulent nature of the injury. *Id.* at 93. During the process, the undercover officer offered the defendant an opportunity to not take the case to avoid committing the fraud, an opportunity the defendant declined. *Id.* at 108. The defendant's explicit willingness to proceed with the crime when offered the chance to back out illustrated his readiness to commit insurance fraud, establishing his predisposition. *Id.*

A criminal reputation can also signify a predisposition. In the *Potter* case, the defendant's name appeared on a list of drug traffickers supplied by a jailhouse informant, which supported reports from other informants about the defendant's criminal activity. 1998 WL 171346 at 1 (Minn. Ct. App. 1998). As a result of this information, the police arranged for an informant to buy drugs from the defendant which resulted in the defendant selling the informant drugs, leading to his arrest. *Id.* Though he raised an entrapment defense, the defendant was found to be predisposed to commit the crime in part due to his criminal

reputation. *Id.* at 3. By being included on the informant's list and being suspected in the community of involvement in the drug trade, the defendant acquired a criminal reputation, which was further supported by a prior conviction for theft and testimony from the defendant's girlfriend about his continuing drug use. *Id.* The combination of these factors indicated the defendant's criminal reputation and established his predisposition to commit the crime.

There is no evidence showing a criminal predisposition by Mr. Varnsen. First, he lacks a relevant criminal history or reputation. Though he has prior criminal convictions for marijuana possession and theft, the convictions occurred thirteen and twelve years ago, respectively. Stip. ¶ 3. Only recent criminal convictions can support a finding of a predisposition, and courts have found recency on the scale of only weeks or months, not decades. *See Johnson*, 511 N.W.2d at 755 (finding no predisposition when twenty years have elapsed between past criminality and the instant offense); *see also G.D.*, 473 N.W.2d at 884 (finding a predisposition from criminal behavior within a month of the instant offense). Furthermore, a drug possession conviction alone is not enough to show a predisposition to sell drugs, while theft is too dissimilar to drug dealing to show a predisposition. *See E.E. B.*, 2009 WL 1374313 at 2. Mr. Varnsen lacks a relevant criminal history to establish his predisposition.

Second, Mr. Varnsen was approached at random on the street, without any informant or community member suggesting he was involved in the drug business. Stip. ¶¶ 6-7. Though the street was known to host marijuana sales, nothing linked Mr. Varnsen to the ongoing criminality before Det. Landry approached him. Id. ¶¶ 5-7. Furthermore, Mr. Varnsen never even approached Det. Landry, let alone offer to conduct a drug transaction. Id. ¶¶ 6-12. Det. Landry, through his own initiative, initiated the solicitation. Id. Without any information linking Mr. Varnsen to criminal activity, the state cannot establish a criminal reputation. *See*

Potter, 1998 WL 171346 at 3 (finding a criminal reputation for a defendant who was known to informants and the community to be involved in the drug trade). The transaction that eventually occurred cannot establish a criminal reputation by the defendant since a predisposition must be established before the police approach a defendant. *Johnson*, 511 N.W.2d at 755. Mr. Varnsen does not have a criminal reputation that could be used to establish a predisposition.

Finally, Mr. Varnsen did not readily respond to Det. Landry's solicitations to commit the offense. Mr. Varnsen refused Det. Landry's first four solicitations for marijuana spread over the course of forty-five minutes, assenting on the fifth attempt when Det. Landry offered a sob story to gain Mr. Varnsen's empathy. Stip. ¶¶ 8-12. Only an immediate positive response by a defendant to a criminal solicitation can show a predisposition by ready response. *See Olkon*, 299 N.W.2d at 108 (finding that a defendant who immediately agrees to criminal conduct has a predisposition by ready response); *see also Johnson*, 511 N.W.2d at 755-56 (holding that a defendant who refuses the first solicitation was not predisposed under any theory, including ready response). Furthermore, Mr. Varnsen did not even have marijuana on him when Det. Landry approached him, needing to go to another residence to find some. Stip. ¶¶ 13-17. As a matter of fact, it was impossible for him to readily respond to Det. Landry's solicitation because he lacked inventory on his person to do so. There is simply no evidence that Mr. Varnsen readily responded to a criminal solicitation or has a predisposition.

Mr. Varnsen lacks a criminal history of selling marijuana, has no criminal reputation as a marijuana dealer, and did not readily respond to Det. Landry's solicitation to sell marijuana. As a result, Mr. Varnsen was not predisposed to sell marijuana, and his entrapment defense may proceed. *Grilli*, 230 N.W.2d at 452.

IV. Conclusion

Mr. Varnsen was entrapped by Det. Landry. Though the court is generally reluctant to find entrapment, the behavior by Det. Landry and Mr. Varnsen's lack of a relevant criminal history or reputation justifies allowing the entrapment defense. *See Johnson*, 511 N.W.2d at 755. Det. Landry badgered Mr. Varnsen by asking him five times to sell marijuana, going beyond merely providing him with the chance to commit the crime and instead inducing the offense. Stip. ¶¶ 8-12; *see also Johnson,* 511 N.W.2d at 755; *see also Poague*, 72 N.W.2d at 625. Additionally, Mr. Varnsen is not predisposed to sell marijuana. He has no criminal reputation, as evidenced by the lack of information linking him to marijuana dealing prior to his encounter with Det. Landry. Stip. ¶¶ 6-7; *see also Potter*, 1998 WL 171346 at 3. His prior criminal record cannot establish a predisposition since the charged crimes occurred long ago and do not directly relate to selling marijuana. Stip. ¶ 3; *see also Johnson*, 511 N.W.2d at 755. Furthermore, he did not readily respond to Det. Landry's attempts to buy marijuana since it took five attempts before he assented. *See Olkon*, 299 N.W.2d at 108; *see also Johnson*, 511 N.W.2d at 755-56. Det. Landry's actions went far beyond just setting a trap to catch a criminal. Instead, he pressured Mr. Varnsen into committing a crime he was not predisposed to commit, resulting in entrapment. As a result, the court should GRANT Mr. Varnsen's Motion to Dismiss.

Applicant Details

First Name	**Caitlyn**
Middle Initial	**N**
Last Name	**Galvin**
Citizenship Status	**U. S. Citizen**
Email Address	**caitlyn.galvin@nyu.edu**
Address	**Address** Street **240 Mercer Street, Room 1606B** City **New York** State/Territory **New York** Zip **10012** Country **United States**
Contact Phone Number	**9782101750**

Applicant Education

BA/BS From	**Boston College**
Date of BA/BS	**May 2021**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 22, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**New York University Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Kenji Yoshino, David Glasgow and
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers for the 2024 term or any subsequent term. I am a rising third-year law student at New York University School of Law, a Senior Executive Editor for the *New York University Law Review*, and a Summer Associate in the Boston office of WilmerHale. I have a strong desire to serve the federal court system and build on the incredible experience I had as an extern with the United States Attorney's Office (E.D.N.Y.). It would be an honor to have the opportunity to serve as one of your clerks.

My legal writing skills and diligent work ethic will assist you in your demanding work. As an intern for the Massachusetts Attorney General, I wrote executive determinations issued to state and local public bodies. With the U.S. Attorney's Office, I drafted multiple legal memoranda and assisted in drafting briefs opposing motions to dismiss and motions for summary judgment. For instance, I aided in the government's lawsuit against a major pharmaceutical distributor by analyzing recent changes in the Supreme Court's definition of unconstitutional vagueness and its implications for the Controlled Substances Act. Finally, my position as a Senior Executive Editor on *Law Review* requires strong attention to detail in proofreading texts for grammar and Bluebook errors.

Please find enclosed copies of my resume, transcripts, writing samples, and letters of recommendation. This past semester, I served as a Research Assistant to Professors Kenji Yoshino and David Glasgow via the Meltzer Center for Diversity, Inclusion, and Belonging. I was also a student in two of Professor Andrew Weissmann's courses, Criminal Procedure and National Security Law. Professor Marcel Kahan taught my Corporations class. Lastly, Special Assistant to the Attorney General Elliot Schachner served as my supervisor during my externship in the USAO. Please find their contact information here:

Professor Andrew Weissmann: (212) 998-6216 (assistant); andrew.weissmann@nyu.edu
Professor Kenji Yoshino: (212) 998-6421; kenji.yoshino@nyu.edu
Professor David Glasgow: (212) 998-6018; david.glasgow@nyu.edu
Professor Marcel Kahan: (212) 998-6268; marcel.kahan@nyu.edu
Special Assistant to the Attorney General Elliot Schachner: (718) 245-7000; elliot.schachner@usdoj.gov

Professor Mindy Nunez Duffourc, who instructed my first-year Lawyering course, is happy to speak with you as a reference. Her contact information is as follows:

Professor Mindy Nunez Duffourc: (504) 239-1877; mnunezduffourc@gmail.com

Thank you for your consideration. Please let me know if you need any further information.

Respectfully,
/s/
Caitlyn Galvin

CAITLYN N. GALVIN

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EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024
Unofficial GPA: 3.52
Honors: *New York University Law Review*, Senior Executive Editor of Printing
Activities: *Supreme Court Forum*, Staff Editor
BARBRI Global, Head Student Ambassador

BOSTON COLLEGE, Chestnut Hill, MA
B.A. in Political Science and History, *summa cum laude*, May 2021
Honors: Phi Beta Kappa
Advanced Standing Program – *degree completed in three years*
Political Science Honors Program
Activities: Research Fellow, Professor Ali Banuazizi

EXPERIENCE

PROSECUTION EXTERNSHIP, **NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY
Extern, ***United States Attorney for the Southern District of New York***, Spring 2024

WILMER CUTLER PICKERING HALE AND DORR, L.L.P., Boston, MA
2L Summer Associate, Summer 2023
Participate in all aspects of complex litigation matters, including a major securities class action. Draft portions of a summary judgment opposition brief in a *pro bono* matter regarding a prisoner's 42 U.S.C. § 1983 claim.

GOVERNMENT CIVIL LITIGATION EXTERNSHIP, **NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY
Extern, ***United States Attorney for the Eastern District of New York***, January 2023 – May 2023
Researched recent changes in the Supreme Court's definition of unconstitutional vagueness, how lower courts have interpreted and applied the precedent, and its implications for the constitutionality of the Controlled Substances Act (CSA). Prepared a memorandum summarizing these developments, outlining unresolved questions, and advising how the government could oppose a pending motion to dismiss. Assisted attorneys in performing related research and drafting findings letters pursuant to civil rights investigations. Observed settlement conferences and depositions.

PROFESSORS KENJI YOSHINO AND DAVID GLASGOW, **NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY
Research Assistant, ***Meltzer Center for Diversity, Inclusion, and Belonging***, January 2023 – May 2023
Researched the Supreme Court's pending affirmative action decisions and their potential impact on the legality of diversity, equity, and inclusion (DEI) initiatives under Title VII. Researched and prepared a memorandum summarizing prior scholarship, analyzing relevant briefs and oral arguments, projecting possible holdings, and discussing the legality of various DEI initiatives under each holding. Assisted Professors Yoshino and Glasgow in advising companies on how to adjust their approach to diversity, equity, and inclusion to comply with the Court's decisions.

OFFICE OF ATTORNEY GENERAL MAURA HEALEY, Boston, MA
Legal Intern, ***Division of Open Government***, June 2022 – August 2022
Assisted attorneys in enforcing the Open Meeting Law. Addressed claims by reviewing complaints, conducting factual investigations, performing legal research, and drafting determinations. Corresponded with public bodies and complainants to evaluate the validity of claims. Accompanied attorneys to hearings in Massachusetts Superior Court.

BLUE SKY TOWERS, LLC, North Reading, MA
Legal Intern, June 2021 – August 2021
Conducted legal research and prepared memoranda on commercial real estate issues. Assisted in preparing and reviewing leases and amendments to leases. Worked closely with the General Counsel to prepare and file litigation documents.

ADDITIONAL INFORMATION

Enjoy hiking with family and attending Boston College, Bruins, and Patriots games. Avid Marvel and Star Wars fan. Well versed in Adobe Photoshop. Additional experience as a store associate at Marshalls (June 2018 – February 2020).

Name: **Caitlyn N Galvin**
Print Date: **06/11/2023**
Student ID: **N11432038**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Mindy Nunez Duffourc			
Criminal Law	LAW-LW 11147	4.0	B+
Instructor: Anna N Roberts			
Torts	LAW-LW 11275	4.0	A-
Instructor: Daniel Jacob Hemel			
Procedure	LAW-LW 11650	5.0	B+
Instructor: Troy A McKenzie			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Martin Guggenheim			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law	LAW-LW 10598	4.0	B+
Instructor: Melissa E Murray			
Lawyering (Year)	LAW-LW 10687	2.5	CR
Instructor: Mindy Nunez Duffourc			
Legislation and the Regulatory State	LAW-LW 10925	4.0	B
Instructor: Samuel J Rascoff			
Contracts	LAW-LW 11672	4.0	A-
Instructor: Clayton P Gillette			
1L Reading Group	LAW-LW 12339	0.0	CR
Instructor: Martin Guggenheim			
Financial Concepts for Lawyers	LAW-LW 12722	0.0	CR

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Fall 2022

School of Law
Juris Doctor
Major: Law

Criminal Procedure: Fourth and Fifth Amendments	LAW-LW 10395	4.0	A-
Instructor: Andrew Weissmann			
Corporations	LAW-LW 10644	5.0	A-
Instructor: Marcel Kahan			
Professional Responsibility and the Regulation of Lawyers	LAW-LW 11479	2.0	A-
Instructor: John P. Cronan			
Class Actions Seminar	LAW-LW 12721	2.0	A-
Instructor: Jed S Rakoff			
Class Actions Seminar: Writing Credit	LAW-LW 12727	1.0	A
Instructor: Jed S Rakoff			

	AHRS	EHRS
Current	14.0	14.0
Cumulative	44.0	44.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Complex Litigation	LAW-LW 10058	4.0	B+
Instructor: Samuel Issacharoff, Arthur R Miller			
Government Civil Litigation Externship - Eastern District	LAW-LW 10253	3.0	CR
Instructor: Dara A. Olds			
Government Civil Litigation Externship - Eastern District Seminar	LAW-LW 10554	2.0	A-
Instructor: Dara A. Olds			
Evidence	LAW-LW 11607	4.0	A-
Instructor: Daniel J Capra			
National Security Law	LAW-LW 12256	2.0	A
Instructor: Ryan Goodman, Andrew Weissmann			
Research Assistant	LAW-LW 12589	1.0	CR
Instructor: Kenji Yoshino			

	AHRS	EHRS
Current	16.0	16.0
Cumulative	60.0	60.0

Staff Editor - Law Review 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

Meltzer Center
for Diversity, Inclusion,
and Belonging
NYU School of Law

May 19, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

It is our great pleasure to recommend Caitlyn Galvin, a rising 3L student at NYU School of Law, for a clerkship in your chambers.

We lead a research center at NYU School of Law focused on advancing interdisciplinary research on issues of diversity, equity, and inclusion (DEI). Caitlyn worked with us as a research assistant in spring 2023 on a project analyzing the implications of the U.S. Supreme Court's decision in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* (*SFFA*) for workplace DEI efforts. Specifically, we asked Caitlyn to assume the Court would rule that affirmative action violates the Equal Protection Clause, and to examine how such a finding might affect affirmative action and other race-conscious DEI programs under Title VII of the Civil Rights Act of 1964.

Caitlyn's research culminated in a comprehensive memo, which analyzed the distinct strands of affirmative action doctrine under Title VII and the Equal Protection Clause, explored multiple potential holdings in *SFFA*, and, most importantly, applied such holdings to a variety of DEI practices. These practices included hiring and promotion targets, the use of identity characteristics as "tiebreakers," expanded recruitment, anti-bias training, compensation tied to diversity goals, affinity groups, and mentorship programs. She concluded that over the long term, a ruling that outlaws affirmative action in higher education could lead to limits on affirmative action in employment, which would effectively ban all set-asides and tiebreakers while preserving expanded recruitment, anti-bias training, and other DEI initiatives.

Caitlyn's memo was thorough, rigorous, and cogent, made all the more impressive by the vague and inchoate nature of the question she was asked to examine. In effect, we invited her to predict what the Court might rule, then predict what implications such a ruling might have for an separate statutory framework, and then to apply those implications to a range of disparate DEI programs, not all of which can properly be characterized as affirmative action. This task could have led to a scattershot set of reflections, but Caitlyn gave us a well-organized and incisive analysis grounded in the relevant case law and secondary literature. Our center is hosting a forum on the subject of Caitlyn's memo in the near future, and her work will prove to be an indispensable resource as we prepare for that session.

In addition to her work with us, Caitlyn has served on the *New York University Law Review*, first as a Staff Editor and subsequently as Senior Executive Editor of Printing. Her training from this experience is evident in the quality of Caitlyn's writing, which is closely reasoned and technically meticulous. It is no surprise that she intends to pursue a career in litigation, where her talent for legal analysis and argumentative rigor will serve her extremely well.

Caitlyn was a pleasure to have on our research team. She has the right mix of research and writing ability, critical thinking capacity, and interpersonal skill to thrive in a demanding clerkship environment. We strongly recommend her to your chambers.

If we can be of any further assistance, please contact us at the telephone numbers or email addresses below.

Sincerely,

Kenji Yoshino
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Marcel Kahan
George T. Lowy Professor of Law

June 2, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

I am writing to recommend Caitlyn Galvin for a clerkship with you.

I know Caitlyn from the Corporations class she took with me in the fall of 2022. Despite the large class size (over 90 students), I remember Caitlyn well. Her contributions enriched the class discussion and showed her strong grasp of doctrine and analytical skills. Caitlyn did very well in the course, earning a grade of A-. Her overall performance, both in the classroom and on the exam, places her within the top 10% of the students in the class.

During her second year at law school, Caitlyn pursued a rigorous and litigation-focused curriculum, including classes in Criminal Procedure, Class Actions, Complex Litigation and Evidence as well as a Civil Litigation Externship in the Eastern District of New York in addition to my Corporations course. Her performance was excellent, with Caitlyn earning an A- average over the year. In addition, Caitlyn has been a highly engaged NYU law student. She is the Senior Executive Editor on our flagship NYU Law Review and was a Staff Editor at the Supreme Court Forum.

On top of that, Caitlyn has significant writing experience. During college, Caitlyn honed her writing and analytical skills by participating in multiple Model UN competitions. Between college and law school, she served as a legal intern where her tasks included writing memoranda on commercial real estate issues. This academic year, Caitlyn wrote an excellent seminar paper comparing class actions and *parens patriae* actions, which I reviewed in the context of writing this recommendation. The paper, which Caitlyn plans to convert into a law review note, deals with an original and interesting topic and the clarity of the composition as well as the quality of the analysis greatly exceeds the clarity and quality of a typical student-authored paper.

In short, I believe that Caitlyn would make an outstanding clerk and I recommend her highly.

If I can do anything else to be of assistance, please feel free to call or write me.

Sincerely,

Marcel Kahan
George T. Lowy Professor of Law

U.S. Department of Justice

United States Attorney
Eastern District of New York

271 Cadman Plaza East
Brooklyn, New York 11201

May 16, 2023

Re: Caitlyn Galvin

Your Honor:

Please accept this letter in strong support of the clerkship application of Caitlyn Galvin. Caitlyn worked in the Civil Division of the United States Attorney's Office for the Eastern District of New York under my supervision as a student intern during the spring term of 2023.

During her internship, Caitlyn performed immensely helpful legal research on complicated legal issues. She prepared two extensive research memoranda dealing with a defense of vagueness raised by the defendants in a major, still-ongoing civil enforcement action commenced by the United States. Those memoranda cogently harmonized seemingly inconsistent Supreme Court and Court of Appeals decisions. She also prepared, in connection with the same action, an extensive research memorandum regarding claim preclusion and issue preclusion, which included a discussion of the extent to which those doctrines can apply against the United States. Her research was reviewed, and highly praised, by attorneys at several components of the Department of Justice. Her research will be reflected in a memorandum of law to be filed by the United States this summer.

In addition, Caitlyn performed very helpful research concerning the issue of whether 8 U.S.C. § 1252(a)(2)(B)(i),(ii) preclude courts from exercising jurisdiction over cases challenging factual and legal determinations underlying discretionary decisions by United States Citizenship and Immigration Services on applications and petitions for immigration benefits. That issue, which has divided the Courts of Appeals, arises frequently in cases defended by this Office, so her research has been, and will continue to be, of great value to this Office.

Throughout her tenure as a student intern, Caitlyn exhibited great interest in, and great enthusiasm for, her assignments, along with a sober, businesslike, unassuming demeanor. She took her work very seriously and made every effort to provide a superior work product.

If you would like additional information about Caitlyn's work for this Office, do not hesitate to contact me at the number below.

Elliot M. Schachner

ELLIOT M. SCHACHNER
Assistant U.S. Attorney
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NYU LAW

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June 12, 2023

RE: Caitlyn Galvin, NYU Law '24

Your Honor:

I write to recommend Caitlyn Galvin for a clerkship. At NYU School of Law, I taught Caitlyn in both my Criminal Procedure and National Security courses. She did splendidly, as I discuss below, in both classes. I recommend her highly as a law clerk. I have no doubt that you would find her smart, diligent, efficient, and thorough, and a particularly careful and clear writer. Caitlyn is also a delight to work with and I am confident she would be a valued and collegial addition to your chambers.

I met Caitlyn in the fall of 2022 in my course Criminal Procedure: Fourth, Fifth and Sixth Amendments. Caitlyn was a consistently thoughtful participant in class and outside of class during office hours. Caitlyn was a very quick study, mastering current doctrine and its subtleties. She was eager to dig deeper on the many complexities of the law, particularly relating to Fourth Amendment doctrine.

Then in spring 2023, Caitlyn was a member of my National Security seminar, where I got to know her better and was able to assess her writing abilities (the seminar had 27 students and required the submission of three papers). Caitlyn continued to be a thoughtful and diligent participant in class, asking clear and cogent questions, demonstrating deep immersion in the assigned material and an inquisitive mind. Her three papers were excellent: she picked interesting topics, researched them well, and wrestled with the pros and cons of a topic. Her writing was also unusually well organized and clear, and unmarred by typos and other distracting errors. Caitlyn impressed both my co-teacher Ryan Goodman, and me equally. Caitlyn received a very well-deserved A in the class for her stellar performance.

Finally, Caitlyn is a pleasure to deal with, and I have no doubt will work very well with other clerks, displaying collegiality and intellectual curiosity.

Please let me know if there is any further information I can provide about Caitlyn. I can be reached by email at aw97@nyu.edu or 917-575-2171.

Sincerely,

Andrew Weissmann

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I researched and wrote this paper as my final assignment for Judge Jed Rakoff's "Class Actions Seminar." My task was divided into two parts. First, I submitted a 7,000-word paper on a topic that I selected: To what extent are *parens patriae* actions viable substitutes for private class actions? There, I examined their respective procedural limitations, agency problems, and deterrence values. Judge Rakoff graded this submission, which my transcript captures as "Class Actions Seminar." Second, Judge Rakoff suggested how I could supplement my initial paper to achieve a 10,000-word final product. He asked me to tackle "how to deal with the limitations of *parens patriae* suits in cases that parallel class action situations," including whether a court could "require the state to ascertain who were the victims and send the money to them." The final paper is reflected on my transcript as "Class Actions Seminar: Writing Credit."

This writing sample encompasses the section of my final paper that responds to Judge Rakoff's prompt. To identify the issues I seek to solve, I also included a brief section summarizing the conclusions drawn in my initial submission. Everything is my own work product; beyond proposing the question, Judge Rakoff did not provide substantive feedback or edits. This year, I plan for this section to form the basis of a Note, which I will submit to the *New York University Law Review*.

An Efficient Alternative: Comparing Class Actions and *Parens Patriae* Actions

Initial Conclusion: Weighing Procedures, Agency Costs, and Deterrence

Parens patriae suits closely mirror class actions. The two forms have similar deterrence values; they force corporations to internalize the costs of their misconduct and alter their behavior. Likewise, both present agency costs. For class actions, issues arise when the entrepreneurial attorney with a significant stake in the litigation prioritizes their fees over their small-stake clients' recovery. Meanwhile, *parens patriae* actions present agency costs when state attorneys general prioritize their or other constituents' interests over those of the *parens patriae* group, as well as when state AGs jockey for position in multistate actions. Although they manifest differently, these costs ultimately interfere with consumers' share of the recovery in both situations. Where *parens patriae* suits and class actions diverge is in their procedural rules. While potential classes must navigate the relatively rigid hurdles of Rule 23 to be certified by a court, *parens patriae* actions can be pursued without any rigid inquiry into their formulation. Ultimately, these points of comparison and dichotomy allow state attorneys general to do the work of class actions more efficiently than private attorneys.[1]

Nevertheless, some may assert that *parens patriae* litigation fails to achieve the principal goal of class actions: directly allocating monetary damages to the injured. Admittedly, *parens patriae* settlements rarely provide for consumer compensation because agency costs interfere.[2] States legislatures prefer the policy flexibility that comes with allocating recovery to the general

[1] *See generally* Susan Beth Farmer, *More Lessons from the Laboratories: Cy Pres Distributions in* Parens Patriae *Antitrust Actions Brought by State Attorneys General*, 68 FORDHAM L. REV. 361 (1999) (concluding that cy pres distributions resulting from *parens patriae* actions can "provide the best available benefit, albeit indirect, to consumers at the most efficient cost").

[2] *Cf.* Dishman, Elysa M. Dishman, *Class Action Squared: Multistate Actions and Agency Dilemmas*, 96 NOTRE DAME L. REV. 291, 338–39 (2020) (discussing how a multistate settlement with General Motors did not provide consumer compensation, but Arizona "opted out" of the agreement, settled independently, and provided $200 per consumer).

fund, while state attorneys general often hope funds will be rerouted to their own office.[3] However, *parens patriae* suits are still a worthwhile alternative because they accomplish class actions' deterrence and recovery goals where private suits fail. Even without cash in hand, consumers reap the benefits of decreased corporate misconduct and increased funding for initiatives in their state. *Parens patriae* actions can break ground where procedural intricacies hamper their private counterpart. Moreover, there are opportunities to address the central limitation of *parens patriae* actions and encourage direct payments to the injured.

I. Addressing the Limitations of *Parens Patriae* Actions

Under Rule 23, class action procedures provide abundant opportunities for trial courts to intervene and protect class members' interests. As previously discussed, Rules 23(a) and 23(b) require courts to evaluate a prospective class at the certification stage, and they may decline to certify the class under a laundry list of provisions designed to protect individual interests within aggregate litigation.[4] Meanwhile, Rule 23(e) mandates court approval of any "proposed settlement, voluntary dismissal, or compromise" and requires that the court ensure sufficient notice is provided to class members.[5] If the proposal would bind class members, this endorsement becomes contingent upon the court finding the settlement "is fair, reasonable and adequate" after considering numerous factors, including whether "the class representatives and class counsel have adequately represented the class," "the effectiveness of any proposed method of distributing relief to the class," and whether "the relief provided for the class is adequate."[6] In this way, Rule 23 provides courts significant latitude to intervene on the class members' behalf at the certification or settlement stage. However, there is no such universal rule authorizing, let

[3] *See id*. at 323, 345.
[4] *See supra* omitted section.
[5] FED. R. CIV. P. 23(e).
[6] FED. R. CIV. P. 23(e)(2).

alone requiring, trial courts the discretion to scrutinize the makeup or settlement of *parens patriae* actions. In turn, this limits their ability to protect individual interests and rights within *parens patriae* suits. Yet, courts do have some mechanisms to pressure attorneys general to allocate recovery to their injured citizens.

II. Courts' Discretion Under Existing State and Federal Law

There are a few narrow circumstances where trial courts are explicitly required to review *parens patriae* settlements. Currently, federal antitrust law,[7] as well as some state antitrust and unfair trade practices laws,[8] mandate judicial sanction of such settlements. For instance, under the Cartwright Act, California's primary state antitrust law, when the California Attorney General brings a *parens patriae* antitrust action, it "shall not be dismissed or compromised without approval of the court."[9] As the Cartwright Act and other similar provisions do not articulate a specific "approval" standard, "federal courts have adopted the approval procedure and standards used for approval in class action settlements under Federal Rule of Civil Procedure 23."[10] Accordingly, when the United States District Court for the Northern District of California reviewed an antitrust settlement between eBay and California as *parens patriae*, it evaluated the parties' plan to provide notice to the *parens patriae* members, the fairness of the settlement, and the distribution plan.[11] *California v. eBay* exemplifies how incorporating the Rule 23(e) approval

[7] *See* 15 U.S.C. § 15c(c) (2006) (providing that a federal antitrust action brought by an attorney general on behalf of their citizens "shall not be dismissed or compromised without approval of the court").
[8] *See, e.g.*, ALASKA STAT. ANN. § 45.50.577(g) (West 2011); COLO. REV. STAT. ANN. § 6-4-111(3)(b) (West 2011); FLA. STAT. ANN. § 542.22(3)(c) (West 2007); OR. REV. STAT. ANN. § 646.775(3) (West 2011).
[9] Cartwright Act, CAL. BUS. & PROF. CODE § 16760(c) (West 2008).
[10] California v. eBay, Inc., No. 5:12-cv-05874-EJD, 2015 WL 5168666, at *2 (N.D. Cal. Sept. 3, 2015); *see also* New York & Maryland v. Nintendo of Am., Inc., 775 F. Supp. 676, 680 (S.D.N.Y. 1991) (noting that courts have adopted the same "fair, reasonable and [adequate]" standard used in class actions for approving *parens patriae* settlements); *In re* Minolta Camera Prods. Antitrust Litig., 668 F. Supp. 456, 459 (D.C. Md. 1987) ("The standard for determining whether a proposed [*parens patriae*] settlement should be approved is whether the settlement is "fair, reasonable and adequate.")
[11] *See eBay*, 2015 WL 5168666.

standard to *parens patriae* approval provisions empowers courts to guard the interest of *parens patriae* members.

First, in its analysis of whether the settlement was "fair, reasonable, and adequate," the *eBay* court examined the planned $2.375 million restitution fund.[12] It noted the fact that those claimants "who were most affected by eBay's practice" would receive $10,000 in recovery and the "generally positive" reaction of *parens patriae* members were factors that weighed in favor of settlement approval.[13] Next, the court turned to the planned *cy pres* distribution for unclaimed funds. The *cy pres* doctrine allows courts to distribute unclaimed or non-distributable portions of a settlement fund to the "next best" means of compensating absent class members, usually charities or advocacy organizations working in an area related to the litigation.[14] Here, the court considered whether the *cy pres* distribution "(1) address[ed] the objectives of the underlying statutes, (2) target[ed] the plaintiff class, and (3) provide[d] reasonable certainty that any member will be benefitted."[15] Since California accused eBay of coordinating with another company to eliminate the competition for employees, the court accepted the *cy pres* distribution to several non-profits upon finding that "each of the identified organizations has a nexus to the underlying lawsuit in that they involve employment-related skills and training, and are all located in California."[16] Ultimately, the District Court approved the settlement plan.

In combination, this approach demonstrates that there is room under some laws for courts to push funds toward the victims in *parens patriae* settlements. For example, just as the *eBay* court considered direct compensation a positive factor in settlement evaluation, courts can reject

[12] *See id.* at *3–6.
[13] *Id.*
[14] *See* Martin H. Redish, Peter Julian & Samantha Zyontz, *Cy Pres Relief and the Pathologies of the Modern Class Action: A Normative and Empirical Analysis*, 62 FLA. L. REV. 617, 620 (2010).
[15] *eBay*, 2015 WL 5168666, at *6.
[16] *Id.* at *7.

settlements under the "fair, reasonable, and adequate" standard if payments are absent where they would be appropriate and feasible. In response, parties would return to the negotiating table and distribute funds to individual citizens or try to avoid rejection altogether by prioritizing payments in initial discussions. Likewise, as the Rule 23 procedures for settlement "approval" allow for court assessment of distribution, courts have the latitude to mirror their evaluation of *cy pres* distributions in class actions when assessing *parens patriae cy pres* distributions or state treasury allotments. Namely, courts can require that, when appropriate, parties direct unclaimed or undistributed funds towards a state program with a nexus to the *parens patriae* litigation. In this way, when companies like Target or Neiman Marcus settle data privacy cases, courts could funnel the recovery towards state data privacy and security divisions rather than general treasury funds.[17] Therefore, even if the litigation does not result in individual payments, judges could ensure *parens patriae* members indirectly benefit.

Despite this positive potential, absent a push by state legislatures to add settlement approval to more causes of action, this judicial examination is ultimately circumscribed to situations where the statute in question contains a specific settlement approval provision. This means that such an opportunity is largely exclusive to federal antitrust suits or in those few states that require approval in their antitrust or unfair trade practices statutes. Consequently, it is necessary to look to other mechanisms of judicial intervention.

III. Redefining Adequacy of Representation

Unlike in class actions,[18] questions of whether attorneys general have adequately represented their constituents rarely surface. Yet, the inquiry is relevant in two contexts, assessing the preclusive effect of a *parens patriae* suit and considering whether private actors

[17] For a discussion of the *parens patriae* actions against Target and Neiman Marcus, see *supra* omitted section.
[18] *See supra* omitted note and accompanying text.

may intervene in a public suit under Rule 24 of the Federal Rules of Civil Procedure.[19] In both instances, courts tend to defer to public attorneys, typically presuming they will adequately represent the interests of their citizens,[20] although the Supreme Court has not explicitly resolved the issue.[21] This respect is often predicated on the notion that attorneys general lack financial interests in the litigation.[22] However, as previously discussed, the belief that *parens patriae* suits lack the principal-agent problems that plague class actions is misguided. If courts adjust to this reality, reject or adjust the degree of deference afforded to public attorneys, and begin to examine whether attorneys general have adequately represented their constituents, they will create an opportunity to scrutinize *parens patriae* settlements.

A. Utilizing Preclusion

Broadly, preclusion provides a mechanism for the final resolution of legal claims. "Claim preclusion" or "res judicata" bars "the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been . . . raised in the first suit."[23] Typically, when the state pursues an interest held by the public at large, courts hold that private parties seeking to vindicate those same public rights in a separate action will be precluded by a final judgment in the *parens patriae* suit.[24] Conversely, if the private action asserts distinctly private rights, then there is no such preclusion.[25] Yet, the distinction between public and private is not always clear given that states are empowered to

[19] FED. R. CIV. P. 24.
[20] *See* Margaret H. Lemos, *Aggregate Litigation Goes Public: Representative Suits by State Attorneys General*, 126 HARV. L. REV. 486, 502–510 (2012) (discussing the agency costs of public and private aggregate litigation).
[21] *See* Richards v. Jefferson Cnty., 517 U.S. 793, 802 n.6 (1996) ("We need not decide here whether public officials are always constitutionally adequate representatives of all persons over whom they have jurisdiction when, as here, the underlying right is personal in nature.")
[22] *See* Farmer, *supra* note 1, at 388.
[23] *Res Judicata*, BLACK'S LAW DICTIONARY (11th ed. 2019).
[24] *See* Lemos, *supra* note 17, at 533–534.
[25] *See id.*

pursue ambiguous "quasi-sovereign" interests. As a result, when an attorney general brings a *parens patriae* action, the preclusive effect of any final judgment is a significant question.

Critically, the Supreme Court has interpreted the Fourteenth Amendment's Due Process Clause to constrain preclusion. In the Court's view, to adhere to "our 'deep-rooted historic tradition that everyone should have his own day in court,'"[26] a nonparty may only be bound to a judgment in narrow circumstances, primarily if they were "adequately represented by someone with the same interests who [wa]s a party" to the suit.[27] In the preclusion context, "[a] party's representation of a nonparty is 'adequate'… only if, at a minimum: (1) the interests of the nonparty and her representative are aligned, and (2) either the party understood herself to be acting in a representative capacity or the original court took care to protect the nonparty's interests."[28] In light of these definitions, the assumption that government attorneys adequately represent their constituents skews courts' analysis towards nonparty preclusion, often inhibiting *parens patriae* group members from pursuing private actions in the gray areas of "quasi-sovereign" interests. Discarding this presumption would free courts to fully scrutinize the adequacy of representation, restrict the preclusive effect of *parens patriae* actions, and thereby pressure *parens patriae* parties to pay individuals directly.

Specifically, when evaluating whether a prior *parens patriae* settlement should preclude a private action by members of the *parens patriae* group, courts should follow the Supreme Court's approach in assessing intra-class conflicts of interest. In *Amchem Products, Inc. v. Windsor*,[29] the Supreme Court examined the terms of the class action settlement and structure of

[26] Martin v. Wilks, 490 U.S. 755, 762 (1989) (quoting 18 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 4449 (1981)).
[27] Richards v. Jefferson Cnty., 517 U.S. 793, 798–799 (quoting *Wilks*, 490 U.S. at 762).
[28] Taylor v. Sturgell, 553 U.S. 880, 900 (2008) (citations omitted).
[29] 521 U.S. 591 (1997).

the settlement negotiations to conclude that the named parties and absent class members did not share the same interests, so the class representatives did not adequately represent the interests of the class.[30] Emulating this pattern, courts should assess the terms of a *parens patriae* settlement and negotiations to determine if the attorney general truly represented the *parens patriae* group's interests.[31] For instance, directing settlement proceeds toward the state treasury may indicate that the attorney general represented the collective public, not the injured. Upon recognizing this misalignment of interests, a court should conclude the attorney general did not adequately represent the *parens patriae* group, so the prior settlement should not preclude the private action. Several courts have already recognized the limits of public representation and followed such an approach. In *Payne v. National Collection Systems, Inc.*,[32] the California Court of Appeal assessed whether a judgment secured by the California Attorney General precluded a consumer class action targeting the same defendant and conduct for alleged violations of unfair competition law.[33] In its analysis, the court found it significant that restitution for the injured was not the Attorney General's primary goal and that no plaintiff in the pending action had received restitution.[34] Accordingly, the court concluded that preclusion did not attach because the interests of the Attorney General in "his role as protector of the public may be inconsistent with the welfare of the class so he could not adequately protect their interests."[35] The class action could thus proceed.

Limiting the preclusive effect of *parens patriae* actions would help direct money towards members of the *parens patriae* group in two ways. First, if private actors are not precluded from

[30] *Id.* at 626–628.
[31] *See id.*
[32] 111 Cal. Rptr. 2d 260 (Cal. Ct. App. 2001).
[33] *See id.*
[34] *See Payne,* 111 Cal. Rptr. 2d at 266.
[35] *Id.*

bringing subsequent suits, *parens patriae* group members are free to litigate an independent class action. In turn, a private class action allows the injured to pursue their own recovery absent from the *parens patriae* action. Second, the enhanced possibility of a follow-on class action can influence an initial *parens patriae* settlement. Generally, defendants in aggregate litigation want "global peace."[36] In other words, they seek to ensure that a *parens patriae* or class action settlement resolves the claims of all possible victims, thus capping their liability and preventing an endless parade of new victims, new litigation, and new payouts.[37] For these defendants, preclusion is the tool that gives an initial result its effect in achieving global peace and barring follow-on claims. It is in their interests to ensure the outcome of a *parens patriae* suit will preclude subsequent class actions and additional costs. Consequently, tying the preclusive effect of *parens patriae* settlements to direct payments to the injured incentivizes defendants to structure the settlement accordingly. Within negotiations with attorneys general, defendants may ask that any agreement stipulate how recovery is distributed, thereby curbing an attorney general's discretion to deposit the funds into the state treasury. In this way, courts can pressure defendants to protect victims' interests where public attorneys do not.

The utility of preclusion in facilitating direct payments to the injured is admittedly imperfect. The preclusive effect of any judgment is assessed *ex-post*; it is determined by the court overseeing the follow-on class action, not the initial *parens patriae* suit.[38] Therefore, even with "adequacy of representation" redefined in the public context, a court dissatisfied with a lack of direct recovery from a *parens patriae* suit still could not reject a settlement on that ground. It

[36] *See* Brian Wolfman & Alan B. Morrison, *Representing the Unrepresented in Class Actions Seeking Monetary Relief*, 71 N.Y.U. L. REV. 439, 459 (1996) (discussing the settlement negotiations regarding the silicone-gel breast implants litigation and defendants' emphasis on resolving all future cases).
[37] *See id.*
[38] *See* Lemos, *supra* note 17, at 532–535.

could only wait until private suits appeared, hold they were not precluded unless victims were paid in the initial matter, and hope future defendants appreciated the message. Moreover, not all *parens patriae* settlements provide courts the eventual opportunity to assess adequacy of representation. Preclusion only attaches when there was a final judgment in the prior action.[39] As court approval of a *parens patriae* settlement is not necessary, whether a *parens patriae* settlement triggers a final judgment depends on how the action was pursued and the underlying law creating the cause of action. For example, if the attorney general sought and received a consent decree or another form of court-issued injunctive relief, then preclusion attaches.[40] Yet, if the parties merely reached a voluntary agreement without a final judgment, it does not.[41] Ultimately, courts cannot scrutinize settlements that are outside their reach. Therefore, it is necessary to combine preclusion with other levers to propel recovery for the injured.

B. Utilizing Independent Intervenors

Rule 24 of the Federal Rules of Civil Procedure allows nonparties to intervene and join ongoing litigation. Rule 24(a)(2) allows nonparties to intervene as a matter of right if they claim "an interest relating to the property or transaction that is the subject of the action, and [are] so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."[42] Meanwhile, Rule 23(b)(2) stipulates that courts are allowed, but not required, to permit

[39] *See* Taylor v. Sturgell, 553 U.S. 880, 892.
[40] *See, e.g.*, Alaska Sport Fishing Ass'n v. Exxon Corp., 34 F.3d 769 (9th Cir. 1994) (affirming the dismissal of a class action after concluding the private plaintiffs were in privity with the government plaintiffs in a prior suit brought under the *parens patriae* doctrine).
[41] *See, e.g.*, Montana v. United States, 440 U.S. 147, 153 (1979) ("Under res judicata, a final judgment on the merits bars further claims by parties or their privities based on the same cause of action."); Lee v. City of Peoria, 685 F.2d 196, 199 (7th Cir. 1982) ("The essential elements of the [res judicata] doctrine are generally stated to be: (1) a final judgment on the merits in an earlier action; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of parties or their privies in the two suits.")
[42] FED. R. CIV. P. 24(a)(2).

nonparties to intervene who have "a claim or defense that shares with the main action a common question of law or fact."[43] However, courts typically bar private parties from intervening in a *parens patriae* action.[44] Continuing the presumption that government entities adequately represent their citizens, courts regularly decline permissive intervention and have held that movants must make "a strong affirmative showing that the sovereign is not fairly representing the interests of the applicant" to warrant intervention as a matter of right.[45] This is a high bar; disagreement over litigation strategy or damages pursued are insufficient to justify intervention, so private plaintiffs are often kept out.[46]

As with preclusion, if courts discard this presumption of adequacy, they create an opportunity to regulate attorneys general. Here, courts should utilize the same standard as in private actions. The proposed intervenor should simply have to show that the attorney general's "representation of his interest 'may be' inadequate" to participate in a *parens patriae* action.[47] This would then enable increased intervention by attorneys or advocacy organizations representing one or more members of the *parens patriae* group. As Edward Brunet argues regarding class actions, intervenors in *parens patriae* suits may function similarly to the separately-represented subclasses commonly utilized in class actions.[48] Essentially, as the AG represents the interests of the state and its citizens as a collective, the intervenor would represent the interests of the injured, advocating for direct payments and other issues during the litigation and settlement process. Such intervenors would also function as monitors, enhancing political

[43] FED. R. CIV. P. 24(b)(2).
[44] *See* Lemos, *supra* note 17, at 508–510.
[45] *See id.* at 509 (quoting United States v. Hooker Chemicals & Plastics Corp., 749 F.2d 968, 985 (1984)).
[46] *See id.*
[47] *Id.* (quoting Trbovich v. United Mine Workers of America, 404 U.S. 528, 538 n.10 (1972).
[48] *See* Edward Brunet, *Improving Class Action Efficiency by Expanded Use of* Parens Patriae *Suits and Intervention*, 74 TUL. L. REV. 1919, 1935 (2000) (arguing that private intervenors can improve the efficiency of class actions by helping the class monitor class counsel).

accountability.[49] With the knowledge of the law, the potential value of claims, and the negotiations that come with active involvement in litigation, intervenors could raise the alarm if an attorney general is deferring to politically connected defendants, diverting money from the injured to their office, or otherwise sacrificing their citizens' interests. This would help make up the resource deficit between citizens and powerful entities, giving voters the necessary information to replace those who do not perform as desired.[50] With these benefits in mind, a court concerned that the attorney general is not pursuing restitution for individual victims would have a recourse *during* the litigation. They could find the attorney general's representation of the injured "'may be inadequate,'" and authorize an intervenor to vindicate that perspective.[51]

IV. Potential Drawbacks of Increased Judicial Discretion

Yet, any expansion of judicial intervention into *parens patriae* actions may come with drawbacks. First, *parens patriae* suits' key advantage over class actions is their lower transaction costs. Class actions' lengthy certification process, notice requirements, and complicated settlement administration procedures add litigation expenses that detract from the plaintiffs' ultimate recovery.[52] If new hurdles lengthen *parens patriae* litigation and settlement negotiations, while courts require direct recovery to the injured beyond where it is cost-effective to administer payments, then such changes will minimize the efficiency advantages that enabled *parens patriae* suits to succeed where class actions failed.[53]

Additionally, judicial activity in this realm would "put courts in the unenviable position of second-guessing the attorney general's choices with respect to policy tradeoffs and other

[49] *See id.*
[50] *See* Lemos, *supra* note 17, at 514–515.
[51] *See* Lemos, *supra* note 17, at 508–511.
[52] *See supra* omitted section.
[53] *Cf.* Brunet, *supra* note 48, at 1938–1939 (discussing the efficiency advantages of *parens patriae* suits).

matters in which judges are unlikely to be expert."[54] For example, an attorney general seeking damages for public loss of use of natural resources after an oil spill may decline to compensate individual resorts or recreational fishermen because the funds would be more efficiently deployed by a state-run cleanup effort.[55] AGs and other elected officials accustomed to such policy tradeoffs may be better suited to making that decision than a judge focused on the litigation and parties in front of them.

Lastly, the risk of being publicly reproached by a judge for failing one's constituents or seeing a court throw out a high-stakes settlement may change the political calculus for attorneys general considering whether to pursue *parens patriae* suits. To an extent, the current information gap gives AGs the freedom to take risks; they can publicize their "wins" and high-dollar settlements, but failures at the negotiating table typically go unnoticed by the press and public.[56] It is much easier for a reporter to scrutinize a settlement allocation when it is dissected in a court opinion or transcript. With this shift, attorneys general may become unwilling to take on those cases that could become political quagmires.

Nevertheless, courts are capable of assuaging these three concerns by limiting their intervention to where direct compensation is clearly appropriate in the context of the litigation. For instance, if Texas allocated its $95,000 share of the Neiman Marcus settlement to the 65,444 victims, each would receive approximately $1.45.[57] A court would easily see the logic in the state retaining the $95,000 to benefit its citizens as a whole and not interfere. Conversely, it may question Georgia's allocation of $99 million to "attracting companies" and examine the litigation

[54] Lemos, *supra* note 17, at 543.
[55] This example is loosely based on the facts of *Alaska Sport Fishing Ass'n v. Exxon Corp.*, 34 F.3d 769 (9th Cir. 1994).
[56] *See* Lemos, *supra* note 17, at 520–521.
[57] *See supra* omitted section for a discussion of the Neiman Marcus data breach settlements.

more closely.[58] This approach would minimize, although not eliminate, transaction costs, judicial second-guessing, and the threat of political upheaval to the most drastic cases. Thus, courts could preserve the efficiency gains of *parens patriae* actions while attacking their most egregious efficiency costs.

Final Conclusion: A Viable but Flawed Remedy with Greater Potential

In the competition with class actions, judicial intervention could tip the scales towards *parens patriae* actions. Although between statutorily mandated approval, weaponized preclusion, and independent intervenors, any individual solution is imperfect, together they empower courts to direct *parens patriae* settlement proceeds toward the genuine victims. With the potency of *parens patriae*'s main principal-agent problem diminished, both agency costs and efficiency would weigh in *parens patriae*'s favor, while their deterrence values would remain offsetting. Yet, in addressing agency costs, courts must be cognizant of the downsides of their intervention and take care not to completely sacrifice efficiency. If the right balance is struck, courts can maximize the utility of *parens patriae* litigation.

[58] *See supra* omitted section for a discussion of the 2012 *parens patriae* settlement between forty-nine states and mortgage-servicing banks, including Georgia's portion of the recovery.

Applicant Details

First Name	**Hannah**
Middle Initial	**V**
Last Name	**George**
Citizenship Status	**U. S. Citizen**
Email Address	**hvlgeorge@uchicago.edu**
Address	**Address** Street **6104 S Woodlawn Ave. Apt 410** City **Chicago** State/Territory **Illinois** Zip **60637** Country **United States**
Contact Phone Number	**9709803695**

Applicant Education

BA/BS From	**Rice University**
Date of BA/BS	**May 2021**
JD/LLB From	**The University of Chicago Law School** **https://www.law.uchicago.edu/**
Date of JD/LLB	**June 1, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**The University of Chicago Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Wilf-Townsend, Daniel
dwilftownsend@uchicago.edu
773-702-9494
Futterman, Craig
futterman@uchicago.edu
773-702-9494
Hubbard, William
whhubbar@uchicago.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Hannah Vinh-Lee George
6104 S. Woodlawn Ave. Apt. 410, Chicago, IL 60637 || 970-980-3695 ||
hvlgeorge@uchicago.edu

June 11, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510-1915

Dear Judge Walker:

I am a rising third-year law student at the University of Chicago Law School, and I am applying for a clerkship position in your chambers for the 2024–25 term.

I am confident that I will meaningfully contribute to the work of the District Court for the Eastern District of Virginia. As an intern for the Civil Rights and Police Accountability Project, I researched and analyzed the viability of civil rights claims. This year, I will file motions on behalf of my clients and argue cases in Cook County Circuit Courts and/or the Northern District of Illinois. As a member of the *University of Chicago Law Review*, I substantively edited multiple articles and wrote a Comment on a potential Circuit split regarding the Americans with Disabilities Act. In my role as an editor, I guide staffers through the Comment writing process, from generating topics to providing substantive feedback and helping with publication.

Enclosed please find my résumé, a writing sample, and my transcript. Arriving separately are three letters of recommendation from Professor Craig B. Futterman, Professor Daniel Wilf-Townsend, and Professor William H. J. Hubbard.

Respectfully,

Hannah V. L. George

Hannah Vinh-Lee George
6104 S. Woodlawn Ave. #410, Chicago, IL 60637 || (970) 980-3695 || hvlgeorge@uchicago.edu

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL, Chicago, IL — June 2024
Candidate for Juris Doctor
Activities: The University of Chicago Law Review, Comments Editor (2023-2024), Staffer (2022-2023)
Asian Pacific American Law Student Association, 3Lder (2023-2024), Outreach Director (2022-2023)
OutLaw
Law Women's Caucus

WILLIAM MARSH RICE UNIVERSITY, Houston, TX — May 2021
B.A., *cum laude*, Cognitive Sciences and Psychology; Minor in Politics, Law, and Social Thought
Honors: Psi Chi – International Honor Society in Psychology; President's Honor Roll
Activities: Rice University Vietnamese Student Association, Co-President
Office of Multicultural Affairs, Diversity Facilitator

UNIVERSITY COLLEGE LONDON, London, United Kingdom — Jul. – Aug. 2019
Completed courses on psycholinguistics and 20th century British periodicals through a six-week summer abroad program.

EXPERIENCE

O'Melveny & Myers, Washington, DC — Current
2L Summer Associate

Edwin F. Mandel Legal Aid Clinic, Chicago, IL — June 2022 – Current
Clinic Intern, Civil Rights and Police Accountability Project

- Drafted internal memorandums on the viability of § 1983 claims and damages for sexual assaults for clients.
- Researched police department policies in major cities and relevant municipal and state law to support amendments to Chicago Police Department policies under the 2015 Consent Decree. Helped draft report on CPD Force Training.
- Interviewed attorneys and staff in the Law Office of the Cook County Public Defender to propose recommendations for office processes on public defender advocacy out of the courtroom. Drafted, in collaboration with other clinic interns, a print report for the office containing our findings and recommendations.

U.S. District Court for the Southern District of Texas, Houston, TX — Jan. 2020 – Apr. 2020
Federal Judicial Intern, Chief Judge Lee H. Rosenthal

- Shadowed in the courtroom for summary judgments, presentation of expert testimony, and criminal sentencing.
- Researched case law regarding the Comprehensive Environmental Response, Compensation, and Liability Act.
- Drafted a partial opinion on a motion to dismiss for failure to state a claim.

Rice University Dept. of Psychological Sciences & Dept. of Sociology, Houston, TX — Aug. 2019 – May 2021
Teaching Assistant & Grader

- Administered and graded exams and assignments for three classes in the Department of Psychological Sciences.
- Graded for two classes, including "Sociology of Law," in the Department of Sociology.

Rice University Office of Admissions, Houston, TX — Aug. 2020 – Dec. 2020
Senior Interviewer

- Evaluated prospective students on their strengths in academic curiosity, leadership/impact on community, communication skills, and interest in the university through one-on-one virtual interviews.

Hebl/King Lab, Rice University Dept. of Psychological Sciences, Houston, TX — Aug. 2018 – Dec. 2020
Research Assistant

- Collected data on public response to a family's acts of forgiveness after a racially motivated murder.
- Conducted research as a confederate in field studies involving race relations and socioeconomic status.
- Transcribed interviews conducted with Muslim men about discrimination in the workplace.

LAW TRANSCRIPT

Hannah George
hvlgeorge@uchicago.edu
(970) 980-3695

Attached is my law school transcript as of June 2023. There are some grades missing on this transcript:

1. Clinic grades for the whole year are released after the spring quarter. I am waiting on the publication of these grades, but if you have inquiries about my performance, my recommender Craig B. Futterman is also my clinic supervisor.
2. Human Trafficking & Regulation of Sexuality: Both of these classes are essay-based, and as of the submission of this transcript, these essays are not yet due.

Please let me know if you have any further questions about this transcript.

REJECT DOCUMENT IF SIGNATURE BELOW IS DISTORTED

THE UNIVERSITY OF CHICAGO
Office of the University Registrar
Chicago, Illinois 60637

Name: Hannah Vinh-Lee George
Student ID: 12334911

Scott C. Campbell, University Registrar

University of Chicago Law School

Academic Program History

Program: Law School
Start Quarter: Autumn 2021
Program Status:Active in Program
J.D. in Law

External Education

William Marsh Rice University
Houston, Texas
Bachelor of Arts 2021

Beginning of Law School Record

Autumn 2021

Course		Description	Attempted	Earned	Grade
LAWS	30101	Elements of the Law Richard Mcadams	3	3	177
LAWS	30211	Civil Procedure Diane Wood	4	4	177
LAWS	30611	Torts Saul Levmore	4	4	177
LAWS	30711	Legal Research and Writing Daniel Wilf-Townsend	1	1	178

Winter 2022

Course		Description	Attempted	Earned	Grade
LAWS	30311	Criminal Law John Rappaport	4	4	177
LAWS	30411	Property Thomas Gallanis Jr	4	4	181
LAWS	30511	Contracts Bridget Fahey	4	4	177
LAWS	30711	Legal Research and Writing Daniel Wilf-Townsend	1	1	178

Spring 2022

Course		Description	Attempted	Earned	Grade
LAWS	30712	Legal Research, Writing, and Advocacy Daniel Wilf-Townsend	2	2	178
LAWS	30713	Transactional Lawyering Joan Neal	3	3	175
LAWS	43220	Critical Race Studies William Hubbard	3	3	180
LAWS	44201	Legislation and Statutory Interpretation Ryan Doerfler	3	3	179
LAWS	47201	Criminal Procedure I: The Investigative Process John Rappaport	3	3	176

Summer 2022

Honors/Awards
The University of Chicago Law Review, Staff Member 2022-23

Autumn 2022

Course		Description	Attempted	Earned	Grade
LAWS	43228	Local Government Law Lee Fennell	3	3	177
LAWS	45801	Copyright Randal Picker	3	3	177
LAWS	90913	Civil Rights Clinic: Police Accountability Craig Futterman	2	0	
LAWS	94110	The University of Chicago Law Review Anthony Casey	1	1	P

Winter 2023

Course		Description	Attempted	Earned	Grade
LAWS	45701	Trademarks and Unfair Competition Omri Ben-Shahar	3	3	180
LAWS	46101	Administrative Law David A Strauss	3	3	176
LAWS	53132	Human Trafficking and the link to Public Corruption Virginia Kendall	3	0	
LAWS	90913	Civil Rights Clinic: Police Accountability Craig Futterman	1	0	
LAWS	94110	The University of Chicago Law Review Anthony Casey	1	1	P

Spring 2023

Course		Description	Attempted	Earned	Grade
LAWS	40301	Constitutional Law III: Equal Protection and Substantive Due Process Aziz Huq	3	3	177
LAWS	41601	Evidence John Rappaport	3	3	177
LAWS	43229	Regulation of Sexuality Mary Anne Case	3	0	
LAWS	90913	Civil Rights Clinic: Police Accountability Craig Futterman	1	0	
LAWS	94110	The University of Chicago Law Review Anthony Casey	1	1	P

Req Designation: Meets Substantial Research Paper Requirement

Send To: Hannah George
6104 S Woodlawn Ave Apt 410
Chicago, IL
60637-2834

End of University of Chicago Law School

Date Issued: 06/03/2023

KEY TO TRANSCRIPT ON FINAL PAGE

OFFICIAL ACADEMIC DOCUMENT

THE UNIVERSITY OF CHICAGO

Key to Transcripts of Academic Records

1. Accreditation: The University of Chicago is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools. For information regarding accreditation, approval or licensure from individual academic programs, visit http://csl.uchicago.edu/policies/disclosures.

2. Calendar & Status: The University calendar is on the quarter system. Full-time quarterly registration in the College is for three or four units and in the divisions and schools for three units. For exceptions, see 7 Doctoral Residence Status.

3. Course Information: Generally, courses numbered from 10000 to 29999 are courses designed to meet requirements for baccalaureate degrees. Courses with numbers beginning with 30000 and above meet requirements for higher degrees.

4. Credits: The Unit is the measure of credit at the University of Chicago. One full Unit (100) is equivalent to 3 1/3 semester hours or 5 quarter hours. Courses of greater or lesser value (150, 050) carry proportionately more or fewer semester or quarter hours of credit. See 8 for Law School measure of credit.

5. Grading Systems:

Quality Grades

Grade	College & Graduate	Business	Law
A+	4.0	4.33	
A	4.0	4.0	186-180
A-	3.7	3.67	
B+	3.3	3.33	
B	3.0	3.0	179-174
B-	2.7	2.67	
C+	2.3	2.33	
C	2.0	2.0	173-168
C-	1.7	1.67	
D+	1.3	1.33	
D	1	1	167-160
F	0	0	159-155

Non-Quality Grades

- I **Incomplete:** Not yet submitted all evidence for final grade. Where the mark I is changed to a quality grade, the change is reflected by a quality grade following the mark I, (e.g. IA or IB).
- IP **Pass** (non-Law): Mark of I changed to P (Pass). See 8 for Law IP notation.
- NGR **No Grade Reported:** No final grade submitted
- P **Pass:** Sufficient evidence to receive a passing grade. May be the only grade given in some courses.
- Q **Query:** No final grade submitted (College only)
- R **Registered:** Registered to audit the course
- S **Satisfactory**
- U **Unsatisfactory**
- UW **Unofficial Withdrawal**
- W **Withdrawal:** Does not affect GPA calculation
- WP **Withdrawal Passing:** Does not affect GPA calculation
- WF **Withdrawal Failing:** Does not affect GPA calculation

Blank: If no grade is reported after a course, none was available at the time the transcript was prepared.

Examination Grades

- H Honors Quality
- P* High Pass
- P Pass

Grade Point Average: Cumulative G.P.A. is calculated by dividing total quality points earned by quality hours attempted. For details visit the Office of the University Registrar website: http://registrar.uchicago.edu.

6. Academic Status and Program of Study: The quarterly entries on students' records include academic statuses and programs of study. The Program of Study in which students are enrolled is listed along with the quarter they commenced enrollment at the beginning of the transcript or chronologically by quarter. The definition of academic statuses follows:

7. Doctoral Residence Status: Effective Summer 2016, the academic records of students in programs leading to the degree of Doctor of Philosophy reflect a single doctoral registration status referred to by the year of study (e.g. D01, D02, D03). Students entering a PhD program Summer 2016 or later will be subject to a University-wide 9-year limit on registration. Students who entered a PhD program prior to Summer 2016 will continue to be allowed to register for up to 12 years from matriculation.

Scholastic Residence: the first two years of study beyond the baccalaureate degree. (Revised Summer 2000 to include the first four years of doctoral study. Discontinued Summer 2016)

Research Residence: the third and fourth years of doctoral study beyond the baccalaureate degree. (Discontinued Summer 2000.)

Advanced Residence: the period of registration following completion of Scholastic and Research Residence until the Doctor of Philosophy is awarded. (Revised in Summer 2000 to be limited to 10 years following admission for the School of Social Service Administration doctoral program and 12 years following admission to all other doctoral programs. Discontinued Summer 2016.)

Active File Status: a student in Advanced Residence status who makes no use of University facilities other than the Library may be placed in an Active File with the University. (Discontinued Summer 2000.)

Doctoral Leave of Absence: the period during which a student suspends work toward the Ph.D. and expects to resume work following a maximum of one academic year.

Extended Residence: the period following the conclusion of Advanced Residence. (Discontinued Summer 2013.)

Doctoral students are considered full-time students except when enrolled in Active File or Extended Residence status, or when permitted to complete the Doctoral Residence requirement on a half-time basis.

Students whose doctoral research requires residence away from the University register *Pro Forma*. *Pro Forma* registration does not exempt a student from any other residence requirements but suspends the requirement for the period of the absence. Time enrolled Pro Forma does not extend the maximum year limit on registration.

8. Law School Transcript Key: The credit hour is the measure of credit at the Law School. University courses of 100 Units not taught through the Law School are comparable to 3 credit hours at the Law School, unless otherwise specified.

The frequency of honors in a typical graduating class:

Highest Honors (182+)
0.5%
High Honors (180.5+)(pre-2002 180+)
7.2%
Honors (179+)(pre-2002 178+)
22.7%

Pass/Fail and letter grades are awarded primarily for non-law courses. Non-law grades are not calculated into the law GPA.

P** indicates that a student has successfully completed the course but technical difficulties, not attributable to the student, interfered with the grading process.

IP (In Progress) indicates that a grade was not available at the time the transcript was printed.

* next to a course title indicates fulfillment of one of two substantial writing requirements. (Discontinued for Spring 2011 graduating class.)

See 5 for Law School grading system.

9. FERPA Re-Disclosure Notice: In accordance with U.S.C. 438(6)(4)(8)(The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without consent of the student.

Office of the University Registrar
University of Chicago
1427 E. 60th Street
Chicago, IL 60637
773.702.7891

For an online version including updates to this information, visit the Office of the University Registrar website:
http://registrar.uchicago.edu.

Revised 09/2016

A PHOTOCOPY OF THIS DOCUMENT IS NOT OFFICIAL

Daniel Wilf-Townsend
Associate Professor of Law
Georgetown University Law Center
600 New Jersey Ave. NW
Washington, D.C., 20001
daniel.wilftownsend@georgetown.edu

May 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to strongly recommend Hannah George to you as a law clerk. I met Hannah when I was a Bigelow Fellow at the University of Chicago Law School, where I taught legal research and writing during her 1L year. Over the course of this yearlong class, I got to know Hannah as a person and see the strength of her work, and I think she would make an excellent law clerk.

Hannah stood out to me at the start of the year just because of the coincidence that we both grew up in Colorado. While I grew up near Denver, Hannah grew up in Aspen—a town in the mountains whose name is associated with luxury ski vacations, but one that can nonetheless feel isolated and somewhat rural for its full-time residents. Hannah's mother is a refugee from Vietnam, and her father never graduated from college. From this relatively humble background, Hannah came to the University of Chicago Law School, where she stood out amongst her peers for her confidence. Hannah's direct, focused approach was obvious in class from the beginning, and she brought a healthy skepticism to legal rules that will serve her excellently as a lawyer.

Hannah's confidence translated well into her work product. The first draft of her first assignment was rough in places, but the writing stood out compared to her peers as particularly direct, active, and well-organized. And where Hannah really shown was her ability to improve. She was in the top few students in the class in terms of her ability to respond to feedback and improve her work product. And she carried her development forward into her subsequent assignments, turning in an open-universe memo (her next assignment) that was not only well written but that also covered the key legal concepts well and that integrated legal materials into her analysis quite well—a skill that many students are still struggling with at that point, which is just a few months into law school.

Hannah's spring brief was also quite effectively done. For this assignment, students were assigned a side in a relatively tricky issue of Article III standing that forced them to grapple with some of the nuances of the Supreme Court's opinion in TransUnion v. Ramirez. The prompt involved a merchant selling U Chicago apparel and a data breach lawsuit. Hannah did a very good job identifying and thoughtfully discussing all of the relevant legal issues. And her brief stood out in particular for her use of secondary sources to provide important context about how the world works, providing information about credit freezes and the market for consumer credit that was relevant and useful for her legal points. Many students have trouble integrating legal arguments in the case law with the "real world" outside of the classroom, and Hannah's brief was an excellent example of how going the extra mile can make for a much more compelling presentation.

Hannah also stood out to me throughout the year for her willingness to advocate for her peers. There were a couple of moments of collective strife among her classmates over the course of the year—one involving the LRW program at Chicago, and one involving a different class—in which Hannah emailed me asking for support or information. These were, I imagine, quite difficult emails to write, as they brought some insecurities and vulnerabilities out in the open, and also included some criticism. But Hannah was polite, professional, and productive in her approach, and I got the sense that she was essentially "taking one for the team" by being the one to reach out to me—putting herself out there in a way that allowed her fellow students to remain anonymous, but giving voice to a collective grievance. This, to me, showed both significant maturity and moral courage, two features that I rate very highly and that are useful in the legal profession in particular.

As I hope all of this indicates, I think that Hannah would make an excellent law clerk. She is in strong shape on the technical legal research and writing skills that a clerk needs, and she has numerous personal qualities that will make her an excellent lawyer. I hope you will give Hannah serious consideration, and I would be happy to speak further via email (daniel.wilftownsend@georgetown.edu) or phone (303-594-0225) if it would be at all useful.
Sincerely,

Daniel Wilf-Townsend
Associate Professor of Law
Georgetown University Law Center

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

1111 East 60th Street | Chicago, Illinois 60637
PHONE (773) 702-9611 | FAX (773) 702-2063
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www.law.uchicago.edu

Craig B. Futterman
Clinical Professor of Law

June 12, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Recommendation for Hannah Vinh-Lee George

Dear Judge Walker:

I enthusiastically recommend Hannah V.L. George as a judicial clerk.

Hannah worked as a summer law clerk in the University of Chicago Law School's Civil Rights and Police Accountability Clinic, which I direct, following her first year of Law School. She then enrolled in the Clinic throughout her 2L year. She has worked on a variety of cases and projects including: (1) a federal civil rights consent decree to redress a pattern and practice of excessive and discriminatory force by the Chicago Police Department (CPD); (2) an individual criminal state post-conviction case; (3) the investigation of three potential civil rights lawsuits involving claims of police abuse; (4) researching and drafting a municipal police accountability ordinance; and (5) a project with the Office of the Cook County Public Defender to identify systemic problems in the criminal legal system that disadvantage their clients and advocate for change. While in the Clinic, Hannah performed a substantial amount of legal research and writing; investigated civil rights claims; interviewed clients, witnesses, and attorney and community partners; developed and delivered oral presentations; counseled clients; and worked as a part of a team with fellow law students. She will be eligible to appear in court under my supervision in her 3L year under the Illinois law student practice rules.

Hannah is a solid writer. As a part of our advocacy to enforce the consent decree referenced above, Hannah researched national best practices for obtaining, executing, and reviewing residential search warrants alongside governing constitutional and state and local law. (We had brought an enforcement action to stop ongoing violent Chicago police home raids targeting families in Black and Brown communities.) Hannah and her fellow summer law clerk produced an excellent brief that persuaded the federal judge overseeing the consent decree to convene court-supervised settlement negotiations on CPD search warrant policies between our clients (community-based organizations with members who are most impacted by CPD home raids), the Police Department, the Illinois Attorney General, and the Independent Monitor of the Consent Decree. In a separate project with the Cook County Public Defender's Office, Hannah drew upon her thoughtful interviews of attorneys and staff to co-author an outstanding report to launch the Defender Advocacy Initiative—an initiative to position the Office to engage in advocacy outside the courtroom. Hannah also delivered a powerful oral presentation about her report to

the Cook County Public Defender and his leadership team. Among the insights that Hannah and her cohorts shared were methods by which the Office can harvest specialized knowledge and data from within about barriers to justice faced by their clients. Due in no small part to Hannah's contributions, one of the largest unified public defender offices in the United States has improved individual client representation and become a powerful advocate for systemic change with their clients. The innovations in Cook County serve as a national model for other public defender agencies.

Hannah also did solid work with individual Clinic clients, in researching potential municipal liability arising from an on-duty police officer's repeated sexual assaults of our client when she was a child in one case and assessing whether and when Fourth Amendment excessive force claims accrued in a case in which our client had been convicted of battering a police officer. In the latter case, Hannah uncovered evidence that the police officer had engaged in a pattern of committing excessive force and initiating false assault and battery charges against his victims to cover up his brutality. She is currently litigating our client's post-conviction petition in state court. The police officer has since been placed on a "Do Not Call" list by the local prosecutor.

Hannah's initiative and enthusiasm for the law set her apart from fellow University of Chicago Law students. In just her 2L year, she has assumed the lead over three different student teams in investigating the viability of civil rights claims alleged by potential Clinic clients. She led the teams in formulating and executing investigative and research plans. The legal aspects of the investigations raise comparable questions to those that come before courts in response to motions to dismiss and motions for summary judgment and provide excellent preparation to serve as a clerk. Her analytic skills are also top notch. She has shown facility with managing and analyzing large document productions in her investigations. For example, the spreadsheets Hannah generated to analyze the pattern of misconduct complaints and lawsuits against the police officer who had filed criminal aggravated battery charges against our client formed the heart of our memorandum in support of our client's post-conviction petition.

Overall, Hannah is a pleasure to work with. She is engaging and thoughtful. She possesses strong communication skills and sound judgment. She is a critical thinker who asks incisive questions that cut to the point. She is not shy about offering critical feedback, and she presents it in a respectful and constructive manner. Her insights revealed ways for me to better structure our pilot project with the Public Defender's Office to maximize impact and learning by my students. She has made me a better teacher.

Hannah's personal background also sets her apart from her peers and situates her to be an excellent judicial clerk. The sensibilities Hannah developed as a child have engendered an understanding of diverse individuals and groups who come before the court, particularly of people who have been subject to discrimination. Having grown up in a white community as a biracial girl with a Vietnamese immigrant mother and white father and being one of only two queer girls of color in her large Colorado high school, Hannah often felt alone. She was made to feel as though she did not fully belong in any single community. On the one hand, she feared rejection from her Vietnamese family due both to her gender identity and her white father. On the other hand, she was stereotyped by her white peers and teachers in her school. She shared with me a particularly poignant childhood story that has stuck with her to this day. Her father

had come to her middle school classroom to drop off a "sweet treat" for her birthday. Her teacher saw Hannah's father kiss her on her forehead as he dropped off the snack. Shortly after her dad left, Hannah's teacher asked, "Are you adopted?"

As a result of her experiences, Hannah possesses empathy for people who find themselves on the outside looking in. These experiences and her fascination with the law are what drove Hannah to law school. Just as she has hurdled over obstacles that have blocked her path, she went to law school to eradicate barriers that can deny people the freedom to pursue their dreams. Those same experiences continue to drive her to be an outstanding clerk. Hannah cares deeply about doing justice. About treating all people fairly.

I have no reservations in recommending Hannah as a judicial clerk. Please do not hesitate to call me at (773) 834-3135 if you would like to discuss her candidacy.

Sincerely,

Craig B. Futterman

William H. J. Hubbard
Professor of Law
University Of Chicago Law School
1111 East 60th Street | Chicago, Illinois 60637
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May 22, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Hannah George for a judicial clerkship. Hannah is a thoughtful, dedicated, and creative student who has thrived in the intense intellectual environment of the University of Chicago Law School. Hannah has a love of the law and is eager to clerk. She will work hard for you as a clerk, and I know that as a clerk she will take great pride in working hard to get the law right.

I got to know Hannah last spring, when she was a student in Critical Race Studies, a 1L elective course that I teach. The course is an introduction to critical race theory as well as related scholarship on law and race from other schools of thought. It is not a course for the faint of heart, given how controversial critical race theory has become and how challenging it can be for students (or anyone else) to vigorously but respectfully debate sensitive topics related to race and racism.

Hannah was a wonderful contributor to the course, both in class discussion and in her weekly short papers. (Students submitted a short essay each week for eight weeks—a grueling schedule, but good preparation for clerking!) Hannah was a fairly active participant in class discussion, always thoughtful and respectful in raising issues or responding to others' comments. Her essays were consistently strong. They reflected both her skill as a writer but also a good lawyer's instinct to ground one's arguments in case law. In a course like Critical Race Studies, it is easy to keep one's arguments at the theoretical level, or to generalize about what courts are doing or what doctrine says. But Hannah's essays stood out for bringing specific cases into the analysis.

One of my goals in teaching Critical Race Studies is to push students to take seriously the "critical" in "Critical Race Theory" and apply their analytical skills to criticize not only legal positions they oppose, but legal positions they sympathize with. This is something Hannah did well. For example, in one essay, she discussed the parties' positions in Students for Fair Admissions v. Harvard, the affirmative action case that the Supreme Court is likely to decide any day now. While her normative view is that affirmative action should be upheld, the essay perceptively exposed weaknesses in both Harvard's defense of their admissions practices and in the challenger's grounds for attacking them.

Overall, Hannah was a strong contributor to the class, and she received a well-deserved "A" (a 180 in our peculiar grading system) in the course.

Let me say just a bit more about Hannah. I have found her to be a friendly, conscientious, and easy-going person. She is thriving and deeply engaged at the Law School, as you can see from her resume. Less apparent from her resume are her interests outside of the law, which are deep and varied. She grew up in Snowmass Village, Colorado, and many of her interests were forged in the Rocky Mountains—alpine skiing, hiking, rafting, and even foraging for wild mushrooms. She loved the years she spent in Houston, including as an intern for Judge Lee Rosenthal. She's an avid traveler, both domestically and internationally. She has long done creative writing, and (as I found in her essays for class) her love of writing has paid dividends even for the very different styles of writing required by law school.

In sum, Hannah is a successful student at one of the toughest law schools in the country. She brings energy, enthusiasm, and thoughtfulness to her work, and I believe she will thrive as a judicial clerk. I am happy to recommend Hannah to you and thank you for considering her application.

Sincerely,

William H.J. Hubbard

WRITING SAMPLE

Hannah George
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Chicago, IL 60637
(970) 9803-695
hvlgeorge@uchicago.edu

As a summer clinic intern in the Civil Rights and Police Accountability Project, I prepared the attached memorandum for a potential lawsuit on behalf of an indigent client. The memorandum examined whether a § 1983 claim would have been barred by the *Heck v. Humphrey* doctrine due to our client's conviction for battery against a police officer. If the claim was not barred, then the statute of limitations would have prevented us from seeking relief, as nearly a decade had passed since the encounter at issue between our client and the arresting officers. To preserve client confidentiality, all individual names and dates have been redacted (as indicated in brackets or a series of X's in the text). I have received permission from my clinical professor to use this memorandum as a writing sample.

I am the only person who has edited this memorandum. My professor looked over an initial draft of this memorandum and requested additional facts of the case for some of the sources touched on in the analysis for the purposes of his own decision-making, but provided no edits or other feedback. This work is entirely my own.

MEMORANDUM

TO: Craig Futterman
FROM: Hannah George
RE: State of the Law in the 7th Circuit re: *Heck v. Humphrey* and Excessive Force Claims
DATE: July 25, 2022

QUESTION PRESENTED

The Cook County Public Defender's office has approached us for help bringing a civil rights suit on behalf of [REDACTED] against the Chicago Police Department. While the statute of limitations would have usually run out in Illinois for his claims of excessive force by now, *Heck v. Humphrey* bars plaintiffs from recovering damages in a § 1983 lawsuit if prevailing in that suit would necessarily imply that an underlying state court conviction or sentence was invalid. *Heck v. Humphrey,* 512 U.S. 477 (1994). If applicable to Mr. [REDACTED]'s case, he may have a path to recovery if he the court overturns his conviction. You asked me to write a memorandum about the state of *Heck* doctrine in the 7th Circuit vis-à-vis 4th Amendment claims of excessive force. Under *Heck,* do Mr. [REDACTED]'s § 1983 claims against all the officers involved in his arrest necessarily undermine his aggravated battery conviction against Officer [REDACTED]?

BRIEF ANSWER

It is unlikely that the court will conclude that Mr. [REDACTED]'s excessive force claims necessarily invalidate his conviction and that they are therefore *Heck*-barred. The court has established that excessive force claims do not necessarily invalidate certain claims, such as resisting a police officer or other uncontested reasons for arrest. However, the court has also agreed that if a litigant's account of the facts could theoretically be compatible with an underlying condition, that claim is still barred by *Heck* if specific allegations are inconsistent with the validity of the conviction. Because of this, it is possible that Mr. [REDACTED]'s claims—that the police framed him for battery to cover up their own uses of excessive force—may be enough for the court to agree that

they are *Heck*-barred until his conviction is overturned. However, if he does not contest even one count of obstructing a peace officer (as it pertains to his removal from his car), then the court is likely to find that it is both possible for Mr. [REDACTED] to have resisted arrest and for the officers to have used excessive force against him in trying to gain compliance. If this is true and the court finds that the officers were justified in using *some* amount of force, then it is unlikely that it will also find Mr. [REDACTED]'s excessive force claims to be *Heck*-barred.

FACTS

On November X, 20XX, Mr. [REDACTED] fled by vehicle during an attempted traffic stop, and was curbed shortly thereafter by members of the Chicago Police Department. *See* ROP, R 150. Two officers forcibly took Mr. [REDACTED] from his vehicle, and a struggle ensued. Allegedly, Mr. [REDACTED] kicked and moved around after he was put face-down on the ground and struck Officer [REDACTED] in the knee with his foot while struggling. *See id.* He was arrested for aggravated battery and resisting or obstructing a peace officer. *See* CLR, C 77.

Mr. [REDACTED] waived his right to testify during his criminal trial. *See* SUP R 148. Because of this, his account of what happened during the encounter with the officers is not on the record. What is on record is what his attorney claims is the story, as detailed above. Mr. [REDACTED]'s attorney pointed out that Mr. [REDACTED] had been Tased after more officers became involved in the struggle. ROP 93. Rather than claim any more specific wrongdoing by the officers during this arrest, Mr. [REDACTED]'s attorney claimed that "it was handled, by both sides, not the way it should have been handled." *Id.* at 93-94. He made no direct claim that the officers used excessive force. Mr. [REDACTED] was found guilty on two counts of aggravated battery of a peace officer (against [REDACTED]) and two counts of resisting or obstructing a peace officer (after he was pulled from his car). *See id.* at C 116. His guilty charges were for aggravated battery against Officer [REDACTED]; Mr. [REDACTED] was found not guilty for aggravated battery

against Officer [REDACTED]. *See* ROP at R 142. On June X, 20XX, he was sentenced to serve XXX years of mandatory supervised release after receiving credit for his XXX days served in custody. *See* CLR at C 129.

On June X, 20XX, Mr. [REDACTED] filed a motion for a new trial contesting, especially, the finding of guilty on the two counts of aggravated battery. *See* ROP at R 149. That motion was denied. *See id.* at R 155. On June X, 20XX, Mr. [REDACTED] filed a notice of appeal for his conviction. *See* CLR at C 135. That appeal was dismissed.

Over the phone, Mr. [REDACTED] claims that his arrest was made primarily to cover up the abuses of the police officers against him. His argument against the aggravated battery charges is that he was not the one to commit battery against the officers, but that the officers were the ones to commit battery against him, and they framed him to cover their actions up. He filed a Motion to Reconsider order on XXXX to contest the State's motion to dismiss of his Amended Post Conviction Petition. This was done so that he may retain an attorney who can amend his Petition with an additional claim of pattern and practice of illegal arrests and abuse by Officer [REDACTED]. Mr. [REDACTED] also alleges ineffective assistance of counsel, actual innocence, and wrongful arrest. On the former point, Mr. [REDACTED] alleges that his trial attorney never questioned the probable cause for the arrest, nor did the attorney investigate an eyewitness he knew was present at the scene.

If Mr. [REDACTED]'s Motion to Reconsider is successful, he would like us to explore options for pursuing a § 1983 suit in the event that his conviction is also successfully overturned.

ANALYSIS

Under *Heck v. Humphrey*, 512 U.S. 477 (1994), if a judgment in favor of the plaintiff would "necessarily imply the invalidity of his conviction or sentence… the [§ 1983] complaint must be dismissed unless the plaintiff can demonstrate the conviction or sentence has already been

invalidated." *Id.* at 487. However, if the plaintiff's claim does *not* demonstrate the invalidity of the criminal judgment against them, the action may proceed. *See id.* Because of this, "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id.* at 489–90.

I. In the Seventh Circuit, a Fourth Amendment claim of use of excessive force can coexist with a valid conviction for resisting arrest; they accrue immediately.

It is well-established in the Seventh Circuit that claims based on out-of-court events, i.e., evidence-gathering, accrue "as soon as the constitutional violation occurs." *Moore v. Burge*, 771 F.3d 444, 446 (7th Cir. 2014). The court states that this is because police misconduct does not necessarily imply the invalidity of any given conviction. *See id; see also, e.g., Wallace v. Kato,* 549 U.S. 384 (2007), *Rollins v. Willett*, 770 F.3d 575 (7th Cir. 2014), and *Booker v. Ward*, 94 F.3d 1052 (7th Cir. 1996) (cases dealing with Fourth Amendment rule against unreasonable searches and seizures). However, in the cases that address this issue, there is usually no contest that the defendant committed the crime for which he was arrested. The defendant instead argues that excessive force was used during the valid arrest.

In *Evans v. Poskon*, 603 F.3d 362 (7th Cir. 2010), police officers burst into Mr. Evans' home to stop, under reasonable suspicion, his attempt to strangle someone to death. "According to the officers, Evans resisted arrest and had to be subdued; according to Evans, he offered no resistance and was beaten mercilessly both before and after the officers gained custody of him." *Id.* at 363. At the time of the opinion, Mr. Evans was serving 71 years for both attempted murder and for resisting arrest. He did not contest that he was guilty of the crime for which he was convicted; rather, he only contested the charges of resisting arrest. Judge Easterbrook concluded that, as Mr. Evans' contention that he did not resist arrest was incompatible for his conviction on that charge, he was barred from proceeding on that contention under *Heck*. *See id.* at 364. However, the judge ruled that

the contention that the officers used excessive force to effect custody is consistent with a conviction for resisting arrest, and was therefore not *Heck*-barred. A similar scenario occurred in *VanGilder v. Baker*, 435 F.3d 689 (7th Cir. 2006), after the defendant was arrested for public intoxication and taken to a nearby hospital for treatment. *See id.* at 690–91. While there, VanGilder resisted the taking of a blood test while strapped to a gurney. Because hospital personnel could not reach his veins, Baker struck him several times in the face. According to Baker, which VanGilder denied, VanGilder kicked Baker in the head during the struggle. Baker claimed in the police report to have responded by punching VanGilder 'repeatedly in the face with a closed fist.' The court found that "an action against Baker for excessive use of force does not necessarily imply the validity of VanGilder's conviction for resisting arrest." *Id.* at 692. The court explained that, "a judgment for VanGilder, should he prevail, would not create 'two conflicting resolutions arising out of the same or identical transaction.'" *Id.*, citing *Heck,* 512 U.S. at 484 (1994).

Mr. [REDACTED] was not convicted of a crime separate from his excessive force claims (e.g., driving recklessly, drug possession, etc.). Rather, he argues that he was battered and arrested falsely. The Fourth Amendment does not prohibit officers from arresting, without a warrant, a person for a minor offense. *See Atwater v. City of Lago Vista,* 532 U.S. 318 (2001). Mr. [REDACTED] was arrested for fleeing from the traffic stop and for refusing to comply with the officers. ROP, R 101-103. That he fled from the officers at the traffic stop was not contested at trial, nor does he seem to be denying those facts on appeal. Mr. [REDACTED] contests instead the aggravated battery charges. Therefore, is likely that Mr. [REDACTED]'s claims are not *Heck*-barred under *Evans*. The clock started once the unconstitutional behavior began.

The city has a strong argument that *Heck* never barred any of Mr. [REDACTED]'s claims of excessive force or related claims on this theory (e.g., unreasonable arrest or other rough treatment) because they are not incompatible with his conviction for resisting arrest. Even in *Hoeft v. Joanis,* 727

F. App'x 881 (7th Cir. 2018), when a defendant makes claims of coerced confessions *from the start*, the court found that "*Heck* never had any bearing on Hoeft's ability to sue for an unreasonable arrest, excessive force, or other rough treatment that preceded his no-contest plea because those claims, if successful, would not undermine his convictions." *Id.* at 883 (citing *Wallace v. Kato,* 549 US 384, 391 (2007) and *Hill v. Murphy,* 785 F.3d 242, 248 (7th Cir, 2015). But key to the ruling in this case was the defendant's abandonment of his appeal and his eventual plea of no contest, as he did not "contend that his plea of no contest was involuntary." *Id.,* citing *Mordi v. Zeigler*, 870 F.3d 703, 707–08 (7th Cir. 2017); *Hill*, 785 F.3d at 250 (Easterbrook, J., concurring). This seems to indicate that the lack of *Heck*-bar is because of the guilty/no contest plea, as a suit about excessive force and coercion of evidence has no bearing in a court case where the defendant admits to their guilt or pleads no contest.

Mr. [REDACTED] claims now that he was framed, and his arrest was primarily to cover up physically abusive behavior by the eight arresting officers. While he may not contest resisting the police officers by fleeing from the traffic stop, he has maintained his innocence vis-à-vis all charges of aggravated battery from the beginning. If Mr. [REDACTED]'s contends that he committed no battery against the officers and that [REDACTED]'s injury was indeed the result of his use of excessive force against Mr. [REDACTED]—that is, as Mr. [REDACTED] says, [REDACTED] hurt his knee by pressing it into Mr. [REDACTED]'s neck rather than Mr. [REDACTED] striking him—then the court may find that Mr. [REDACTED]'s claims of excessive force are incompatible with his conviction for aggravated battery.

II. A Fourth Amendment claim that implies the invalidity of a conviction for aggravated battery is barred by *Heck.*

The leading case addressing *Heck* vis à vis convictions made in error is *Okoro v. Callaghan,* 324 F.3d 488 (7th Cir. 2003). In *Okoro,* the defendant claimed that he had been the victim of a theft by

officers. *Id.* at 489. The court acknowledged that it was possible for him to be both guilty of drug possession, for which he was convicted, and for the officers to have stolen his property. *Id.* However, since the defendant had insisted from the outset that the officers had lied in their testimonies and that he had been trying to sell them the gems that they stole rather than heroin, his claims were *Heck*-barred until he "knock[s] out his conviction, which he has never done." *Id.* "A plaintiff's claim is *Heck*-barred despite its theoretical compatibility with his underlying conviction if specific factual allegations in the complaint are necessarily inconsistent with the validity of the conviction." *McCann v. Neilsen*, 466 F.3d 619, 621 (7th Cir. 2006) (citing *Okoro* at 490); *see also Douglas v. Vill. of Palatine,* No. 17 C 6207, 2021 WL 979156, at *3 (N.D. Ill. Mar. 16, 2021).

The facts of Mr. [REDACTED]'s case are distinguishable from *Okoro* in that Mr. [REDACTED] did not claim that the officers had framed him, nor did he contest that he did flee from the officers during the traffic stop. However, the Seventh Circuit has also previously ruled that, even after a defendant takes a guilty plea, if his lawsuit against the city "rests on a version of the event that completely negates the basis for his conviction," the claim is barred by *Heck*. *Tolliver v. City of Chicago*, 820 F.3d 237, 243 (7th Cir. 2016). Whether or not, in the abstract, their claim of excessive force could survive *Heck* is irrelevant. *See id.* While Mr. [REDACTED] did not take a guilty plea, it is likely that under this theory, since his facts of the case are at major if not complete odds with the story given by the officers, a suit against them may be considered *Heck*-barred by the court.

The Seventh Circuit has acknowledged that the *Heck* rule in application is complex. *See Moore v. Mahoney,* 652 F.3d 722, 726 (7th Cir. 2011). Here, the court ruled that "[a] prisoner convicted of battery of correctional officers could not allege, in a claim that those officers used excessive force against him, that he had committed no battery that would justify any use of force by the officers (instead claiming that he swatted away an unknown and hand then stood up before being tackled by officers)." *Douglas* at *4. If the plaintiff had argued that the officers overreacted to his battery, his

claim would have not been *Heck*-barred. However, since the plaintiff claimed no battery occurred at all to justify any use of force, the court found his excessive force claim was barred. The court recommended on remand that the district judge give "serious consideration to allowing a plea of equitable tolling," despite the expiration of the limitations period on excessive force claims. *Moore* at 726.

Despite this acknowledgement of the complexity of the *Heck* rule, the 7th Circuit does not ever seem to have ruled that an excessive force claim is barred by *Heck*. Though a successful appeal of his conviction might open Mr. [REDACTED] up for success on a case on the circumstances of his arrest (i.e., false arrest, being framed, etc.,) it seems unlikely that the court will find that the statute of limitations has not run out on Mr. [REDACTED]'s excessive force claims. It is not impossible, though: since Mr. [REDACTED]'s account of the incident is like Moore—that is, that Mr. [REDACTED] committed no battery at all against the officers and so being beaten and Tased was, indeed, excessive—then the court may find that the excessive force claims were *Heck*-barred. *See also Brengettcy v. Horton*, 423 F.3d 674, 683 (7th Cir. 2005) (use of excessive force *after* a plaintiff committed battery was not *Heck*-barred, as it "d[id] not undermine [the plaintiff]'s conviction or punishment for his own acts of aggravated battery"). However, Mr. [REDACTED] was also convicted on two counts of resisting a peace officer. If Mr. [REDACTED]'s resistance is found to be a result of trying to avoid injury from the excessive use of force, then his excessive force claims are incompatible with his arrest; but if on one count he resisted *before* any officer used excessive force against him, then his excessive force claims are not *Heck*-barred, because it is possible for Mr. [REDACTED] to both have resisted arrest and for the officers to have used too much force to try to gain compliance.

CONCLUSION

Because Mr. [REDACTED] does not contest that he fled from the traffic stop and does not

seem to contest in interviews that he resisted being pulled from his car, it is likely that the court will find that his § 1983 excessive claims accrued at the time of arrest, since they do not invalidate his conviction on at least one count of obstructing a peace officer. However, Mr. [REDACTED]'s claim that the police officers framed him for aggravated battery *does* call into question the validity of his conviction: Mr. [REDACTED]'s account of the arrest is that the officers viciously beat him, and that the injuries sustained by both officers are the result of their uses of force, not Mr. [REDACTED] striking them while resisting arrest. Mr. [REDACTED] may have an argument that, as the excessive force and framing claims relate directly to his conviction for aggravated battery, his claims are *Heck*-barred and the statute of limitations has not run out yet. The court does not seem to have been faced with a case where the cause of the initial traffic stop—suspected drug possession—was not the cause of arrest, nor was Mr. [REDACTED] convicted of any drug crimes at trial. If Mr. [REDACTED] may pursue his claim that the officers framed him for aggravated battery after his conviction is overturned, then it is possible that his § 1983 claims have not expired under the Illinois statute of limitations. However, it seems unlikely that the court will deviate from its general position that excessive force claims do not, by necessity, invalidate convictions for uncontested crimes.

Applicant Details

First Name	**Amelia**
Middle Initial	**Y**
Last Name	**Goldberg**
Citizenship Status	**U. S. Citizen**
Email Address	**ayg237@nyu.edu**
Address	**Address** Street **1391 Dean St #3W** City **Brooklyn** State/Territory **New York** Zip **11216** Country **United States**
Contact Phone Number	**19179918635**

Applicant Education

BA/BS From	**Harvard University**
Date of BA/BS	**May 2019**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Review of Law and Social Change**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gottlieb, Christine
gottlieb@mercury.law.nyu.edu
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Arons, Anna
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Cox, Adam
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising 3L at New York University School of Law. I am enclosing my application for a clerkship in your chambers for the term beginning in fall 2024 or any subsequent term. As a public interest law student interested in civil rights law, particularly in the family defense space, working as your clerk would be an invaluable opportunity to sharpen my skills and prepare for what I hope will be an impactful career.

Included below are my unofficial transcript, resume, writing sample, and three letters of recommendation. My writing sample is a brief that I produced in the NYU Law Family Defense Clinic for a client who was seeking expungement of her record in New York's State Central Register of Child Abuse and Maltreatment. I developed this brief over the course of the school year, beginning by interviewing my client and analyzing an extensive written record that she had kept, then reading relevant case law as well as legislative history, and ultimately culminating in writing the brief. It sets forth my strongest argument, based on the facts and the law, for why my client should receive administrative relief.

My letters of recommendation are from Professors Adam Cox, Christine Gottlieb, and Anna Arons. After taking his class during my 1L year, I was a Teaching Assistant for Professor Cox in Legislation and the Regulatory State last spring. In that role, I prepared practice problems and led review sessions for students, helping them work through material in the course. Next, Professor Gottlieb was my supervisor in the Family Defense Clinic, an intensive full-year clinic through which I represented multiple clients, wrote four motions, and appeared regularly in court. Professor Gottlieb supervised my most difficult case, a *res ipsa loquitor* child abuse case that we successfully defended to reach a very favorable settlement, ultimately bringing my client's three children home. Finally, Professor Arons is the director of impact litigation for the Family Defense Clinic and supervised my work on the expungement case, including the development of the brief that is attached as my writing sample.

Thank you for your consideration.

Respectfully,

Amelia Y. Goldberg

AMELIA YASMIN GOLDBERG

2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024. GPA 3.9
Honors: Butler Scholar – one of ten students with the top cumulative grades after four semesters.
Pomeroy Scholar – one of ten students with the top cumulative grades from the first year.
Activities: Teaching Assistant, Legislation and the Regulatory State, Professor Cox
Initiative for Community Power, Spring and Summer Fellow
Research Assistant, Professor Richard Brooks, Summer 2022
Review of Law and Social Change, Staff Editor
Ending the Prison Industrial Complex, tutoring program for formerly incarcerated students, Chair
OUTLaw, member and mentor
Summer Power Building Retreat for Law and Political Economy, August 2022

HARVARD UNIVERSITY, Boston, MA
B.A. in Social Studies, *summa cum laude*, May 2019. GPA: 3.97
Senior Thesis: *Between Kin, Ship, and Shore: The Intersection of Feminism and Environmentalism aboard a Hudson River Sailboat*
Honors: *Phi Beta Kappa* Junior 24 – one of 24 students with top academic performance in junior year.
American Anthropological Association Sylvia Forman Prize in feminist anthropology, 2019
Best Manuscript Prize, The Harvard Undergraduate Research Journal, Spring 2018
Harvard College Scholar, 2017; John Harvard Scholar, 2016; Detur Book Prize, 2016
Activities: Our Harvard Can Do Better, Lead Organizer
Language: Intermediate Spanish

EXPERIENCE

FORTHCOMING: Summer legal fellow, Vladeck, Raskin & Clark, July – August 2022

FAMILY JUSTICE LAW CENTER, New York City, NY
Intern, May 2023 – Present
Identifying potential plaintiffs for class action advancing civil rights of parents and families. Wrote memo analyzing likelihood of conflict of interest finding in potential plaintiff class of parents on behalf of themselves and their children.

BROOKLYN DEFENDER SERVICES, New York City, NY
Clinic Participant, Family Defense Practice, September 2022 – May 2023
Represented three clients in *res ipsa loquitor* physical abuse case, expungement case, and neglect trial. Prepared for two fact-finding hearings by analyzing medical records, identifying medical expert witness, planning objections to opposing evidence, and drafting cross-examinations. Wrote order to show cause for unsupervised visits; reply papers defending visits on appeal; expungement brief; and *motion in limine* to exclude evidence. Represented clients at three settlement conferences, a permanency hearing, and two settlement hearings. Conducted cross-examination that won limited unsupervised visits.

MAKE THE ROAD NEW JERSEY, Elizabeth, NJ
Peggy Browning Labor Law Fellow, May – August 2022
Conducted legal research and advocacy for a Temporary Workers' Bill of Rights. Wrote several memos defending bill language. Drafted amendments that became part of enacted law. Communicated between organizers, Senate staff, and coalition members in English and Spanish. Met with Amazon workers during early organizing efforts and wrote report analyzing potential litigation, organizing, and legislative strategies for workers. Assisted with T-Visa immigration case.

ALYSE GALVIN FOR CONGRESS, Anchorage, AK
Deputy Finance Director, April – December 2020
Raised over $1 million in 6 months from high-dollar donors and members of Congress in $7 million total Independent campaign for AK-AL. Managed text, digital, and PAC fundraising programs as well as Alaskan political outreach. Remotely hired and supervised finance assistant, 3 part-time fellows, and 5 interns, the most racially diverse team on the campaign.

ROGER MISSO FOR CONGRESS, Syracuse, NY
Finance Director, January – March 2020; *formerly* ***Deputy Finance Director,*** September – December 2019
Oversaw fundraising for candidate in NY-24 Democratic primary, raising over $200,000 without accepting funds from corporate PACs, oil and gas, or health insurers. Developed field, policy, and political programs for the campaign.

Name:	**Amelia Y Goldberg**
Print Date:	**06/07/2023**
Student ID:	**N17619373**
Institution ID:	**002785**
Page:	**1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Tyler Rose Clemons			
Torts		LAW-LW 11275	4.0	A-
Instructor:	Mark A Geistfeld			
Procedure		LAW-LW 11650	5.0	A
Instructor:	Helen Hershkoff			
Contracts		LAW-LW 11672	4.0	A
Instructor:	Richard Rexford Wayne Brooks			
1L Reading Group		LAW-LW 12339	0.0	IP
Instructor:	Cynthia L Estlund			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law		LAW-LW 10598	4.0	A
Instructor:	Melissa E Murray			
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Tyler Rose Clemons			
Legislation and the Regulatory State		LAW-LW 10925	4.0	A
Instructor:	Adam B Cox			
Criminal Law		LAW-LW 11147	4.0	A
Instructor:	Ekow Nyansa Yankah			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Catherine M Sharkey			

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Pomeroy Scholar-Top Ten Students in the first year class

Fall 2022

School of Law
Juris Doctor
Major: Law

The Law of Democracy		LAW-LW 10170	4.0	A-
Instructor:	Samuel Issacharoff Richard H Pildes			
Comp Constitutional Law		LAW-LW 10221	2.0	B+
Instructor:	Tarunabh Khaitan			
Family Defense Clinic Seminar		LAW-LW 10251	4.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Family Defense Clinic		LAW-LW 11540	3.0	A-
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	43.0	43.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Family Defense Clinic Seminar		LAW-LW 10251	4.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Employment Law		LAW-LW 10259	4.0	A
Instructor:	Cynthia L Estlund			
Family Defense Clinic		LAW-LW 11540	3.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Labor Law		LAW-LW 11933	3.0	A
Instructor:	Wilma Beth Liebman			
Directed Research Option B		LAW-LW 12638	1.0	A
Instructor:	Adam B Cox			

	AHRS	EHRS
Current	15.0	15.0
Cumulative	58.0	58.0

Butler Scholar - Top Ten Students in the Class after four semesters
Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

New York University
A private university in the public service

School of Law

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E-mail: gottlieb@mercury.law.nyu.edu

Christine Gottlieb
Adjunct Professor of Clinical Law

June 12, 2023

RE: Amelia Goldberg, NYU Law '24

Your Honor:

I write to enthusiastically recommend Amelia Goldberg for a judicial clerkship.

Amelia was a student in the Family Defense Clinic, which I teach at NYU. The clinic is a year-long, 14-credit course, which has both seminar and fieldwork components. Students handle all aspects of representing parents in civil child abuse and neglect proceedings. In addition to twice weekly seminar meetings, I met with Amelia for supervision at least once a week (and sometimes several times a week) outside of class, and therefore got to know her work quite well.

Having been privileged to teach at NYU School of Law for over twenty years, I can say that Amelia has one of the keenest legal minds of all the students I've taught. Her legal analysis is top notch. She is able to parse case law with nuance and to unpack and explain complicated legal issues. In particular, I was struck by Amelia's ability to draw on principles raised in one course or area of law to address questions that arose in another. I wish more law students were as good at taking the initiative to connect underlying legal principles on their own without waiting for a teacher to draw the roadmap!

As a result of her ability to draw connections, make subtle distinctions, and articulate complex issues clearly, Amelia consistently raised the level of discussion in our seminar. Whatever the topic, her comments were unfailingly thoughtful and pressed her fellow students to go deeper in their understanding of law and policy. She was always prepared—not only to discuss the readings, but to follow the conversation wherever it went and offer original insights. She was able to argue strenuously for her positions in a manner that was constructive and respectful.

Amelia's field work was also very strong. On one case, Amelia represented a client who was charged civilly with child abuse based on a res ipsa theory when her young child suffered unexplained bone injuries. Amelia's many talents came to the fore in her handling of this case. She demonstrated her compassion and commitment to client-centered lawyering by building a strong relationship with the client and counseling her through complicated decisions about possible settlements. Amelia also marshalled the strongest possible

arguments on both the legal and factual aspects of the case. She grasped the complicated res ipsa rule that governs civil child protective matters in New York and also became an expert in the medical issues in question, including learning the details of bone diseases that might explain the injuries.

Along the path of that case, Amelia and her partner drafted two very persuasive motions and Amelia conducted an effective cross examination of a case worker. When the team won unsupervised visits for the client with her child, Amelia helped draft reply papers on a short time frame to successful defend against a stay application. By the end of a year of strenuous effort by Amelia and her teammate, children's services agreed that the children should be reunified with our client—a rare victory for such cases in Family Court.

Furthermore, Amelia went the extra yard to volunteer to take on responsibility for a case beyond the two required of all clinic students (most of the students elect to stay with the required number). In that matter, Amelia worked carefully through an extensive record and wrote a comprehensive letter brief on behalf of the client, arguing that her record in the state register of child abuse and maltreatment should be expunged.

Throughout the year, Amelia worked hard, responded well to constructive feedback, and paid attention to detail. I know from conversations with other attorneys who have supervised her that they have been equally impressed with Amelia.

In short, Amelia's work has stood out as exemplary. I believe she would make an excellent law clerk.

I would be happy to provide additional information if that would be helpful. I may be reached on my cell phone at 718-374-1364.

Sincerely,

/s/

Christine Gottlieb

NYU LAW

ANNA ARONS
Acting Assistant Professor
Lawyering Program

Impact Project Director
Family Defense Clinic

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May 31, 2023

RE: Amelia Goldberg, NYU Law '24

Your Honor:

I write to recommend Amelia Goldberg for a clerkship in your chambers. I have worked closely with Amelia over the last year in my capacity as the Impact Project Director of NYU's Family Defense Clinic, supervising her on a project that has required substantial legal research and writing, mastery of an extensive factual record, complicated strategic decision-making, and the development of a trusting relationship with a client. Amelia shone in each of these areas—and showed herself to be an empathetic and generous colleague, to boot. I am confident that she would bring these same outstanding qualities to a clerkship and I recommend her without reservation.

The NYU Family Defense Clinic represents parents facing child welfare cases. The overwhelming majority of families affected by the child welfare system in New York City are poor and Black or Latinx, and the Clinic works through both direct representation and systemic advocacy to combat the indignity and inequality routinely experienced by these parents. All clinic students represent individual clients in direct-representation cases in family court, itself a time- and emotionally-intensive undertaking. In addition to this work, students may also volunteer for additional projects, such as representing parents in administrative proceedings to modify records of child abuse or neglect from New York State's Central Register. In all aspects of this work, the Clinic seeks to empower students to take the lead on their cases.

In Fall 2022, just a few weeks into the semester, Amelia volunteered for an additional project, under my supervision, on top of her primary casework. Her work on this project spanned from Fall 2022 to Spring 2023, and we met for supervision approximately every other week and emailed frequently in between. Her project was a bit unusual, in that the Clinic was seeking to fully expunge a record of an unsubstantiated report of child neglect. While New York State has a clear and commonly used administrative procedure for the *amending and sealing* of records of child neglect in cases where the report was substantiated, the process for *expunging* records is far more discretionary, far more opaque, and far less commonly used.

Thus, Amelia needed to conduct extensive research to understand not only the legal meaning of notoriously vague terms like "neglect" and "inadequate supervision" but also what (if any) legal standard might be applied to our application for expungement and what sorts of evidence would be considered. Her research was exhaustive, as she delved into caselaw,

administrative decisions, and even legislative history. Her dive into legislative history was particularly impressive; at the outset, I told her that I was pessimistic about the odds of her finding anything useful, but I was delighted to be proven wrong, as she came back with pages of material shedding light on the legislative purpose of retaining unsubstantiated reports on the register and the related purpose of allowing the expungement of some of those reports.

Alongside this extensive legal research, Amelia also needed to familiarize herself with an extensive factual record. The client for the expungement case was a meticulous record-keeper—which was, of course, fortunate, but also meant that Amelia had hundreds of pages of medical and school records, email correspondence, text messages, and photos to dig through and synthesize. By the end of the fall semester, she had carefully organized and digested the records and showed a remarkable facility with the many facts and moving pieces. At the same time that she was conducting legal and factual research, Amelia also developed a productive and trusting relationship with our client, consistently showing care and compassion toward the client while carefully explaining complicated legal matters and giving our client the information she needed to make decisions about her own case.

Pulling all of this together, Amelia spent the spring semester drafting an impressive 15-page letter brief arguing for expungement. In her writing, Amelia succinctly and persuasively summarized the relevant caselaw, and advanced clear and credible arguments grounded in her careful understanding of the relevant authority and the factual record. All the while, she showed great instincts for triaging arguments and retaining her credibility.

Throughout the semester, Amelia demonstrated a remarkable receptiveness to feedback and enthusiasm for improving her own skills. Indeed, on more than one occasion, even as she waited on feedback from me, she continued to improve and revise the letter-brief on her own initiative. More broadly, she never struck me as passive in her learning; rather, she commonly displayed an all-important—but often difficult—skill of asking questions. This extended beyond just writing. Much of our time in supervision was devoted to discussing complicated questions about the lawyer-client relationship, ethical obligations, and the difficult balance between strategies most likely to achieve a positive outcome for a client and strategies that give voice to all of the client's concerns.

As I am sure this letter makes clear, I found Amelia a delight to supervise—or perhaps more accurately, to work alongside. She is enthusiastic, conscientious, and kind, not to mention fully dedicated to all that she takes on. I should mention, too, that Amelia initially took on this project with another student, but when the other student took a medical leave, Amelia gracefully and without complaint stepped up to shoulder the project on her own. Even when juggling extra responsibilities and stressors in and out of law school, Amelia maintained a sense of perspective and balance, not to mention a wry sense of humor. I have no doubt that she would bring this same thoughtful, good-humored approach to her clerkship and that she would make the term a genuine pleasure. I am excited to see her continue to develop her legal skills and critical thinking through a clerkship and have no doubt she will make use of all she has learned to be an excellent and thoughtful lawyer.

If you have any questions or would like any additional information, I am more than happy to talk further. I can be reached on my cell phone at 530-574-6790 or, until July 1, by email at anna.arons@nyu.edu. Following that date, I will be joining the faculty at St. John's University School of Law, but I remain available to provide additional information and can be reached then at aronsa@stjohns.edu.

Sincerely,

Anna Arons

NYU LAW

ADAM B. COX
Robert A. Kindler Professor of Law

New York University School of Law
40 Washington Square South, 509
New York, NY 10012-1099
212 992 8875
adambcox@nyu.edu

June 7, 2023

Dear Judge:

I write to strongly recommend Amelia Goldberg for a clerkship in your chambers.

By way of background, I am a professor of law at NYU School of Law, where I teach and write about immigration law, constitutional law, and administrative law, among other subjects. Before joining NYU's faculty I taught at the University of Chicago Law School.

Amelia is one of the strongest students I've taught in the last five years at NYU. I first got to know her when she was a student in my section of Legislation and the Regulatory State (LRS), a required first-year course that introduces students to administrative law and statutory interpretation. She wrote one of five strongest exams in the class. Her exam performance was no surprise to me, given what I'd seen from her during the term. She stood out in classroom conversations and in office hours as uncommonly astute, inquisitive, and thoughtful. She was clearly a close reader of cases, quickly mastered complicated doctrinal topics, and was extremely perceptive about the political and historical contexts within which the cases we were reading had been decided.

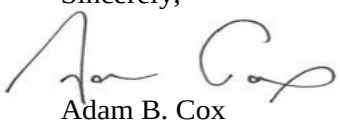
Given her performance in LRS, as well as my sense that Amelia would work well in a small group and be a great teacher, I invited her to work this spring as one of three teaching assistants for my LRS course. In that role she produced practice problems and review materials, led two review sessions, and held regular office hours with the other two teaching assistants. Students raved about how helpful she and the other two teaching assistants were this spring. Indeed, I can't recall ever having as many students stop by my office or email me to say how amazing they thought the teaching assistants had been. As their supervisor, I was equally impressed. The practice problems Amelia produced for her review sessions were, frankly, better than similar ones that I had produced in previous years. And when I had a family emergency crop up in the middle of the term, Amelia and her co-TAs generously stepped in. They helped prepare materials (and me!) for a review session that I was supposed to run and even coordinated with the entire class to solve some challenging scheduling issues.

All of these experiences drove home for me that Amelia is not only a stellar student—though she is surely that. She is also a kind, thoughtful, collaborative person who would be a wonderful addition to the intimate work environment in chambers. I could go on: I could

write more than I already have about her tremendous commitment to public service, for example, which infuses everything she does. But mostly I want to urge you to give her your strongest consideration.

Please let me know if there is any additional information I can provide about Amelia. You can reach me at my office or on my mobile at (917) 407-8282.

Sincerely,



Adam B. Cox

AMELIA YASMIN GOLDBERG

2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

Dear Judge,

Attached is a writing sample I produced as a student in NYU's Family Defense Clinic. The clinic is an intensive, full-year opportunity to represent parents who are facing allegations of child abuse or neglect in family court. In addition to my regular clinic assignments, I volunteered to represent a mother who was the subject of an unsubstantiated report of child neglect. New York maintains records of all reports of child abuse or neglect in its State Central Register, even when they are unsubstantiated. I wrote the attached brief to seek the expungement of my client's record in that database. In addition to my own legal research, the brief is a product of many interviews with my client and the review of a significant written record.

I worked with a clinic colleague as well as my supervisor, Professor Anna Arons, during the early stage of this case. However, my clinic colleague took a medical leave before we began writing the brief, leading me to take full responsibility for legal research, drafting, and editing. Professor Arons met with me regularly while I worked on the brief and gave me feedback on several drafts. However, the finished product below is in my own words.

I have changed all names in the brief to preserve my client's confidentiality. The Family Defense Clinic has given me permission to share this anonymized brief with you as a writing sample.

Thank you for your consideration,

Amelia Y. Goldberg

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I. PRELIMINARY STATEMENT

Ms. Smith is the subject of an unsubstantiated report in the State Central Register ("SCR") for medical neglect and inadequate guardianship regarding Hannah Green-Smith **(Case Number Omitted)**. The report was made on May 30, 2022, and concerns Hannah's alleged behavioral problems at preschool. As detailed below, prior to any report being made, Ms. Smith had already exercised more than adequate care by promptly having Hannah's mental health assessed by four separate medical experts. Reports from the four experts concluded that Hannah's behavior was transitional and developmentally normal.

Ms. Smith now seeks the expungement of the record of created by this report. The Social Services Law provides for expungement of a report on clear and convincing evidence that the subject child was not neglected. N.Y. SOC. SERV. LAW § 422(5)(c) (McKinney 2023). Here, clear and convincing evidence affirmatively refutes the allegation of medical neglect in two ways: first, it shows that Hannah was never seriously harmed or at risk of such harm; and second, it shows that there was no neglectful act or omission because Hannah consistently received thorough medical care from Ms. Smith. The report of inadequate guardianship was also baseless because even if true, Ms. Smith's alleged inability to control Hannah's behavior at school did not amount to neglect. Furthermore, the record supports expungement because the report was likely made in bad faith. Therefore, Ms. Smith respectfully requests expungement of these unsubstantiated reports from the SCR.

II. FACTUAL AND PROCEDURAL BACKGROUND

As detailed below, Ms. Smith was the subject of two reports of child neglect, both made by individuals associated with her daughter Hannah's new preschool. These reports were made after Ms. Smith and her husband had already sought extensive care for Hannah; after four medical

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professionals had each concluded that Hannah was a developing normally and did not need specialized services, a paraprofessional, or psychological intervention; and shortly after Ms. Smith had reported Hannah's preschool—the apparent source of these reports—to the New York City Department of Education ("DOE") for concerns related to its treatment of Hannah. The Administration for Children's Services ("ACS") quickly determined the reports to be unsubstantiated.

II.A. Factual history

Prior to her enrollment in Berkeley Preschool ("Berkeley"), Hannah had always been deemed a well child. Her parents brought her to all of her check-ups and ensured she was fully vaccinated, and her pediatrician consistently noted that she exhibited "appropriate growth and development." Pediatric Record at 2-5, 38, 26, 23, 16, *attached as* Exhibit A (noting Hannah's development during well visits at ages 2, 3, 4, and 5). At four months old, she began daycare at Go Kids, and later she attended City Preschool, with only minor issues. Exhibit A at 36 (attending daycare with "some bad behavior"); March 17, 2021 Child Pediatrics Evaluation at 1, *attached as* Exhibit B ("behavior was less 'problematic'"). By October 2021, at age four, Hannah had attained an independent reading level and was described by her teacher as a "smart girl who knows all her letters, shapes, colors, & numbers." Oct. 21, 2021 Reading Assessment at 6, *attached as* Exhibit C; Nov. 5, 2021 assessment, *attached as* Exhibit D. She had never been recommended for an Individual Education Plan (IEP). ACS Case Notes at 18, *attached as* Exhibit E.

In February 2022, Hannah started 3-K at Berkeley. An orthodox Jewish preschool, Berkeley was a substantially different environment from her previous secular daycare. WhatsApp Message History with Class Phone at 1 (describing weekly classroom Shabbat), 4 (discussing Hannah's Hebrew name), 7 (singing in Hebrew), *attached as* Exhibit F. Hannah was the only non-

AMELIA YASMIN GOLDBERG
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white and the only secular student in her classroom. Emails with Department of Education at 4, *attached as* Exhibit G. Despite this challenging adjustment, Berkeley staff initially reported that Hannah was doing well. WhatsApp Message History with Berkeley Administrator at 1 ("[Hannah] is adjusting nicely," "[Hannah] is certainly learning her surroundings and it is an adjustment"), *attached* as Exhibit H; Exhibit F at 1 ("Hannah is awesome!! She is learning our classroom routines").

Unfortunately, Berkeley staff soon began reporting to Ms. Smith that they were having trouble managing Hannah's behavior and asking for extra assistance in the classroom. Exhibit F at 4; Exhibit H at 3. Staff described Hannah laughing uncontrollably, touching her friends, saying bathroom words, and having difficulty taking turns. Exhibit F at 5-6; Letter from Berkeley, *attached as* Exhibit I. The school asked Ms. Smith to seek additional help for Hannah in the classroom, suggesting a preschool IEP, a nonprofit program for special needs children, or psychological evaluation as potential avenues for assistance. Exhibit H at 3 ("Insurance will not hand out a para unless there's a diagnosis . . . I could send you, obviously, to a psychologist . . . if they feel like she needed the service they'll write something up for her"), 4-6 (discussions of potential resources); Exhibit A at 20-21 ("School recommended psych evaluation, and would like her to have a paraprofessional").

Ms. Smith immediately took the school's concerns seriously. Exhibit H at 3 ("I really appreciate you folks flagging this . . . It is an issue that needs to be addressed"). With the school's agreement, and hoping not to limit Hannah's future educational opportunities, she opted to pursue psychological assessment rather than an IEP. Exhibit H at 3. The week after the school first raised concerns, Ms. Smith requested a psychiatric referral from Hannah's pediatrician. Exhibit A at 20-21 ("Mom tried calling psych clinics, however can't get an appointment for a year. Referral placed

AMELIA YASMIN GOLDBERG
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for psych"). She also contacted an occupational therapist that Berkeley recommended, who unfortunately could not accept additional patients. Text Message History with Occupational Therapist, *attached as* Exhibit J. Ms. Smith and her husband, Mr. Green, both completed substantial outreach in search of a child psychiatrist who would take their insurance, contacting nearly 50 doctors. Exhibit H at 4; Emails Seeking Doctors, *attached as* Exhibit K.

Even with the difficulty of finding a doctor on such short notice, Ms. Smith and Mr. Green promptly provided Hannah with thorough medical care. Within a week of Berkeley raising concerns, Ms. Smith arranged for Hannah to see a psychoanalyst, Dr. Robin Williams. Emails with Berkeley at 1, *attached as* Exhibit L. Then, on March 16, 2022, Ms. Smith brough Hannah in for an appointment with her pediatrician, Dr. Karen Wilkerson. Exhibit A at 19. The following day, Mr. Green took Hannah to be evaluated by a pediatric neurologist, Dr. Chuan Zhu. March 17, 2022, Child Pediatrics Appointment Note, *attached as* Exhibit M. A week later, on March 23, Hannah was seen at Helping Hands Pediatric Occupational Therapy. March 23, 2022, Helping Hands Pediatric Occupational Therapy Appointment Note, *attached as* Exhibit N. Ms. Smith also worked to provide additional psychological care for her daughter. June 7, 2022, Email Log of Calls to Psychiatrists, *attached as* Exhibit O. By June, Ms. Smith had enrolled Hannah in therapy. Exhibit E at 37; June 8, 2022 Email Confirmation with New Behavior Therapy, *attached as* Exhibit P.

Throughout these medical assessments, providers agreed that Hannah was perfectly well and was merely experiencing difficulties transitioning to the new school. The pediatrician, Dr. Wilkerson, concluded that "[Hannah's] actions at school are likely behavioral," added that a psychiatric referral would only be necessary if the problems worsened, and cleared Hannah to return to school. Exhibit A at 19. Ms. Smith reported to Berkeley staff that per this assessment,

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Hannah's actions were "perfectly average, especially in the current pandemic circumstances." Exhibit H at 9. Dr. Wilkerson referred Hannah to be assessed for signs of an adjustment disorder, "just to be sure," marking this referral as "preventive health management." July 17, 2022 Email to CPS Worker at 2, *attached as* Exhibit Q; Exhibit A at 19; March 16, 2022 Referral for Pediatric Outpatient Occupational Therapy, *attached as* Exhibit R. On April 20, 2022, just over a month after the initial concerns were raised by Berkeley, Dr. Wilkerson once again gave Hannah a clean bill of health, noting her appropriate growth and development. Exhibit A at 16-17.

Similarly, Dr. Zhu's found that Hannah was cooperative, related well, and was "friendly, very verbal; no aggressive behaviors; easily engaged." Exhibit B at 2. Concurring with Dr. Wilkerson, Dr. Zhu concluded that Hannah was developmentally normal for her age in all areas, including personal and social development. *Id; see* Exhibit A at 19. He also explained to Hannah's parents that her behavior was normal given her age and the circumstances, and could be corrected by her parents and teachers without additional assistance. Exhibit H at 9. While Dr. Zhu diagnosed Hannah with an adjustment disorder, he did not prescribe medications, a paraprofessional, or other classroom assistance. Exhibit B. Instead, he recommended Hannah's parents and teachers engage in behavioral modification to help her follow instructions and build awareness of social cues. *Id.* Following this recommendation, Ms. Smith engaged in behavioral modification at home, including having conversations with Hannah about how to treat others. Exhibit H at 10; Exhibit F at 8.

The psychoanalyst and occupational therapist also concurred that Hannah was a well, normally developed child. Unfortunately, when asked for a written assessment, the occupational therapist provided an assessment for a different child and has not been able to provide Hannah's report. May 6 Emails with Helping Hands Pediatric Occupational Therapy, *attached as* Exhibit S; May 25, 2022 Insurance Complaint, *attached as* Exhibit E (complaint to insurance for services not

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rendered); Exhibit Q at 2; Exhibit E at 21.[1] However, as memorialized by Mr. Green, the occupational therapist did not recommend a paraprofessional or any other intervention at school. Exhibit H at 10. Instead, she thought that Hannah could benefit from a writing workshop and assistance with her balance – interventions not related to the behavior Hannah exhibited at school – and recommended that Hannah's parents work with the school on "setting rules for Hannah for what is acceptable and not." *Id*.; Exhibit K at 21. Similarly, Dr. Williams did not think that Hannah needed treatment and considered it possible that she was acting out due to not being challenged enough in the classroom. Exhibit L at 1.[2]

Finally, two social service professionals who observed Hannah at school described her behaviors as falling within a developmentally normal range. First, the DOE investigator noted that some of Hannah's behaviors were "typical for a 5yr old." Exhibit E at 22. Subsequently, Child Protective Specialist ("CPS") Sharon Tyler also observed Hannah at school and at home, and concluded, "[b]ased on CPS observation . . . Hannah seems to be developmentally on target." Exhibit E at 18.

Throughout Hannah's appointments, Ms. Smith had consistently kept Berkeley staff updated about Hannah's medical care. *See generally* Exhibit L (emailing updates following medical appointments). Subsequent to Dr. Zhu's recommendation that Hannah's behaviors would best be addressed by staff at the preschool, where they occurred, Ms. Smith requested that Berkeley staff work with Hannah on behavioral modification. Exhibit H at 9; Exhibit B. In response, however, Berkeley staff contested the neurological evaluation – the same evaluation they had

[1] The report that was provided to Ms. Smith is attached, with confidential patient information redacted. The child described in that report is a three-year-old brought in by their mother, whereas Hannah was four at the time and was brought in by her father. Helping Hands Pediatric Occupational Therapy Daily Note, dated May 5, 2022, *attached as* Exhibit U (mother provided patient history); Exhibit N (Hannah was brought to the appointment by Mr. Green). The therapist has not yet provided a correct report to Ms. Smith or her attorneys. *See* Emails with Attorneys, *attached as* Exhibit V.

[2] Ms. Smith requested a written report from this appointment, but Dr. Williams declined to provide one.

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themselves requested, less than a month earlier – insisting that their teachers were very skilled but that "[w]e need somebody from the outside to step in." Exhibit H at 3, 11. Although none of Hannah's doctors had recommended a paraprofessional, Berkeley suggested that she might be expelled if her parents did not secure such assistance. Exhibit G at 7.

At the same time, Ms. Smith became concerned about how Berkeley staff were treating Hannah, who often came home injured or bruised. Exhibit F at 7; WhatsApp Group Message History, Hannah's Parents and Berkeley Teachers at 4, 6, 7, *attached as* Exhibit W; Exhibit G at 1-2. Hannah would later report that teachers squeezed and pinched her face as punishment, and she became afraid to go to school. Photos of Hannah, *attached as* Exhibit X; Exhibit G at 4; June 9, 2022 Email to DOE Investigators, *attached as* Exhibit Y.

On March 25, Ms. Smith filed a report explaining these concerns with the DOE. Exhibit G at 6-7. The DOE opened an investigation, during which investigators documented that Hannah's teachers were using inappropriate strategies such as removing Hannah from the classroom to address her behavior. *Id.* at 3 ("we are working with the teaching staff to use more effective strategies that do not involve separating Hannah from her peers"). The investigation also led to increased tensions between Ms. Smith and Berkeley staff. Exhibit L at 1 (Berkeley staff stating that "lengthy emails can continue after yours and our trust is reinstated"). At one point during the investigation, when Ms. Smith raised concerns about corporal punishment, Berkeley staff responded by stating that "Hannah shares with her and others in the school things that occur at home," which Ms. Smith took to imply that school staff would "make false accusations against me and my husband in retaliation" if she proceeded with her complaint. Exhibit G at 4.

Indeed, two weeks later, two people apparently connected with Berkeley made reports to the SCR alleging that Ms. Smith and Mr. Green had abused and neglected Hannah. The first, made

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on May 30, 2022, alleged that Ms. Smith failed to provide for Hannah's mental health needs and was unable to control her behavior. State Central Register Record, dated Aug. 16, 2022, at 4, *attached as* Exhibit Z. The source for this report described the same concerns about Hannah's behavior at school previously raised by Berkeley staff, but also added that Hannah had been making suicidal and homicidal statements, a concern never previously mentioned by school staff and notably absent from a letter the school had prepared detailing Hannah's behavior. Exhibit E at 2, 7-8; *see generally* Exhibit I. During an investigative visit to Berkeley, ACS Child Protective Specialist ("CPS") Sharon Tyler discussed these allegations with the source. Exhibit E at 2, 7-8. The source also conveyed information that only Berkeley staff would know, referencing the report that Ms. Smith had filed with the DOE as well as Berkeley policies for disciplining students. *Id.* at 8. Additionally, the source recounted certain steps taken by Berkeley staff, including recommending that Hannah's parents have her evaluated around March of 2022. *Id.* at 5-6; *compare* Exhibit H at 3.

Ultimately, Ms. Smith withdrew Hannah from Berkeley. Exhibit W at 8. The following day, an additional report was called in by a source also apparently associated with the school. This source related that she had seen Hannah every day until Hannah was withdrawn from preschool. She also stated that while it would not violate Berkeley's policy to make a report, "this report is being made by her independently of the school." Exhibit E at 32. In contradiction with the first source, this source noted that Ms. Smith did follow up on the recommended evaluations. *Id.* at 33. Instead, she alleged that Hannah's parents were treating her aggressively. When asked "if she ha[d] ever seen this or heard of it happening, she replied no." *Id.* at 32.